



STATE OF MAINE  
MAINE REVENUE SERVICES

**PT102**

# **Maine Property Tax Law**

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## TABLE OF CONTENTS

<b>FOREWORD</b>	1
<b>KEY TO READING LEGAL CITATIONS</b>	3
<b>CHAPTER 1 – INTRODUCTION TO UNITED STATES LAW AND MAINE LAW</b>	
Constitutional Law	5
Statutory Law and the Legislative Process	6
Judicial Law (Case Law)	9
Administrative Rules	10
Legal Opinions	11
Rules of Statutory Construction	11
<b>CHAPTER 2 – MAINE CONSTITUTIONAL PROPERTY TAX PROVISIONS</b>	
Historical Overview	13
Just Value Clause	15
Other Provisions	17
<b>CHAPTER 3 – THE OFFICE OF THE ASSESSOR</b>	
Qualifications for the Office	21
Selection of Assessors	22
Oath of Office	24
Compensation for Assessors	25
Liability of Assessors	25
Powers and Duties	27
Training and Certification	31
<b>CHAPTER 4 – FISCAL MATTERS</b>	
Property Tax Appropriations	33
Tax Rate and Overlay	33
Due Dates and Interest Rates	34
Tax Bills	36
Fiscal Year Changes	36
<b>CHAPTER 5 – ADMINISTRATION</b>	
Property Tax Division of Maine Revenue Services	37
Assessing Standards	38
Revaluations	39
Real Estate Transfer Tax	39
Primary Assessing Areas	40
<b>CHAPTER 6- REAL ESTATE TAXES</b>	
General	41
Where and to Whom Real Estate is Taxable	41
Description of Real Estate	45
Current Use Assessments	48
Limitations on Land Use	53
<b>CHAPTER 7 – PERSONAL PROPERTY TAXES</b>	
Where and to Whom Taxable	57
Description of Personal Property	59
Business Equipment Tax Reimbursement (“BETR”) Program	59

Business Equipment Tax Exemption ("BETE") .....	60
Retail Property Exclusion from BETE .....	61
Certain Retail Property Eligible for BETE .....	62
<b>CHAPTER 8 – EXEMPTIONS</b>	
Fundamental Concepts .....	63
Public Property .....	63
Property of Institutions and Organizations .....	65
Property of Individuals .....	69
Federally Recognized War Periods as of April 1, 2015 .....	71
Other Miscellaneous Exemptions .....	72
Exempt Personal Property .....	72
Property Subject to Excise Tax in Lieu of Property Tax .....	74
<b>CHAPTER 9 – SUPPLEMENTAL ASSESSMENTS</b> .....	75
<b>CHAPTER 10 – ABATEMENTS</b>	
Fundamental Concepts .....	77
Types of Abatements .....	77
Abatement Procedures .....	79
<b>CHAPTER 11 – APPEALS</b>	
Legal Foundations .....	83
Municipal Appeals .....	85
County Commissioner Appeals .....	85
State Board of Property Tax Review .....	86
Court Appeals .....	86
<b>CHAPTER 12 – MISCELLANEOUS PROVISIONS</b>	
Special Assessments .....	89
Municipal Development Districts .....	90
Tax Base Sharing .....	90
Property Tax Relief .....	90
<b>APPENDIX A</b>	
Case Briefs .....	95

# FOREWORD

This publication is designed to serve two primary purposes. The first is to provide students of property tax law with an authoritative source of information concerning property tax administration. The second is to provide assessors with a reliable resource on Maine property tax law and administrative procedure.

Because the Maine Legislature amends tax law every year, readers of this text should consult all subsequent publications issued by the Property Tax Division to ensure a complete, updated source of reference materials. Updates of many publications and annual summaries of law changes are available in the Property Tax Division section of the Maine Revenue Services website, [www.maine.gov/revenue/propertytax/](http://www.maine.gov/revenue/propertytax/).

This text begins by introducing the origins of United States law and the basic functions and principles of its legal system. The historical context provides a broad perspective and appreciation of the structure of the law, and affords a more complete understanding of contemporary Maine property tax law. The emphasis on definitions and judicial interpretation should enhance the readers' insight and comprehension of Maine tax law and its practices.

Appendix A provides alphabetically arranged summaries of the court decisions noted in this text. The cases were selected for their significant contribution to administrative practice. This appendix also includes citations for the cases.

The Property Tax Division welcomes comments and suggestions from users of this guide for subsequent revisions of this material. Send your comments to [prop.tax@maine.gov](mailto:prop.tax@maine.gov) with "Basic Course 2 Suggestions" in the subject line.



## KEY TO READING LEGAL CITATIONS

Throughout this manual, references are made to legal sources such as court cases, statutory provisions, legislative enactments, and opinions of the Attorney General. You should consult these documents to develop basic legal research skills as well as a deeper appreciation for the dynamics of the legal process. There are a variety of online services, both free and subscription-based, that provide access to legal sources.

**Statutory references.** The most frequently used type of legal reference in this text is the statutory citation. Laws enacted by the Maine Legislature are codified in a multi-volume set called the Maine Revised Statutes Annotated. Laws are divided into major subject areas called titles. For example, Title 10 is concerned with laws affecting commerce and trade; Title 29 pertains to motor vehicle law; Title 30-A is the body of law concerning municipal government; and Title 36 contains the tax laws. Titles are divided into parts that, in turn, are divided into chapters and subchapters.

For example, Title 36, Part 2, Chapter 102, Subchapter 5 is the logical sequence in arriving at Subchapter 5 (Assessing Standards) that is included in Chapter 102 (Property Tax Administration) of Part 2 (Property Taxes) of Title 36 (Taxation).

Ordinarily, part, chapter and subchapter heading references yield to the uniquely numbered sections within any title that, in turn, may be divided into subsections, paragraphs, subparagraphs, divisions, and subdivisions. For example, the law requiring business equipment to be depreciable under the Code to qualify for exemption in the Business Equipment Tax Exemption program is located at Title 36, Part 2, Chapter 105, Subchapter 4-C section 691, subsection 1, paragraph F, subparagraph 2, division a. The statutory reference would be cited simply as follows: 36 M.R.S. § 691(1)(F)(2)(a), where “§” is the symbol for “section.” This is the most common form of statutory citation. Since section numbers are all unique within a title, standard statutory reference excludes the chapter and subchapter numbers.

A federal statute would be cited in the form 42 USC § 1983, referring to section 1983 of Title 42 of the United States Code, which is, more particularly, the federal Civil Rights Act of 1871.

**Legislative enactments.** Another commonly used citation appears in the following form: PL 1985, c. 381. This refers to the Public Laws of 1985, chapter 381 which changed the tax rate for Maine's real estate transfer tax (36 M.R.S. § 4641-A). Every regular session of the Maine Legislature results in several new laws. Each Legislature begins in an odd-numbered year and lasts for two years. Ordinarily, there are two sessions to each Legislature, the first beginning in January of the first year and the second beginning in January of the following year. The example cited above was the three hundred eighty-first Public Law recorded by the Secretary of State, as enacted by the 112th Legislature, which convened in January 1985. The assignment of consecutive chapter numbers uniquely identifies legislative enactments. Public Laws are annually published in volumes entitled Laws of Maine.

Public Laws (PL) are enactments that have relevance to the public at large, or a major segment thereof. Besides Public Laws, the Legislature also passes laws that have relevance to specific, limited segments of the population. These are called Private and Special Laws (P&SL); for example, a bill that would allow a municipality to vote to secede from one county to become part of another county would be enacted in the form of a Private and Special Law. In addition, the Legislature also passes Resolves (R) that generally are acts that relate to a limited purpose and do not require amendments to general law. For example, the annual legislative authorization to reimburse municipalities for taxes lost as a result of the Maine Tree Growth Tax Law. Resolves neither amend existing law nor do they create new law. Simple error corrections incorporated by the Revisor's Office, such as renumbering two sections with the same number enacted during the same legislative session, are noted in the Revisor's Report (RR).

**Court cases.** Court cases are identified by the name of the case, such as (*Dillon v. Johnson*). Cases are cited in the form (*Plaintiff v. Defendant*); generally, the plaintiff is the party who initiated the suit. In cases appealed to the Maine Supreme Judicial Court, the plaintiff is generally the party who lost

the case in Superior Court. The appendix contains summaries of decisions rendered by the Maine Supreme Judicial Court. There are no references in this text to Superior Court decisions. Superior Court decisions have persuasive authority, but are not binding upon other courts. Decisions of the Maine Supreme Judicial Court, however, are binding on all lower courts until and unless they are overturned by future rulings of that court or a higher court.

Before 1966, the Atlantic Reporter was designated as the official report of the Supreme Judicial Court. Since then, Maine Supreme Court cases are printed in the Maine Reporter. The above noted case is normally cited as *Dillon v. Johnson* (1974) Me., 322 A.2d 332, which means that this case is found in section 322 of the 1974 Maine Reporter beginning on page 332.

Complete, up-to-date sets of the Maine Revised Statutes Annotated, are available in most libraries across the state. The statutes are available on the Legislature's website at: <http://www.mainelegislature.org/legis/statutes/>. The online statutes do not contain the legislative history or the summary of court cases (Notice of Decisions). The Laws of Maine, Maine Reports, the Maine Reporter and Atlantic Reports are available in the law library of every county building, court libraries, and in the law library of the Maine Municipal Association. In addition, records of legislative floor debates for a certain statute are located at the Maine Law and Legislative Reference Library in the Capitol Building in Augusta.

**Administrative Rules.** The formal citation format for an administrative rule is 18-125 CMR 205.2. The first set of digits are agency-unit numbers (in this case, "18" identifies the Maine Department of Administrative and Financial Services; and "125" denotes the Bureau of Revenue Services). CMR is the abbreviation for "Code of Maine Rules" and "205.2" identifies section 2 of Chapter 205, which is Maine Revenue Services' regulation dealing with the specifics of assessor certification examinations. This uniform numbering system provides a logical method by which the state arranges, cross-indexes, and references citations within the Code. A complete set of current rules is available for public use in the Office of the Maine Secretary of State, which office is responsible for the codification and publication of Maine's administrative rules. Rules are available online on the Secretary of State's website; Maine Revenue Services' rules are also available on the MRS website. In this text, the format for citing rules will be less formal. The above rule and section, for example, will be referenced as MRS Rule 205.2.

**Opinions.** Finally the discussion of a particular statutory provision may occasionally include one of the following two types of citations: either (Opinion of the Justices (1945) 141 Me. 442) or (Opinion of the Attorney General, Mar 4, 1980). These would indicate that the foregoing statutory interpretation is based on an opinion of the Justices of Maine's Supreme Judicial Court or on an opinion of the Maine Attorney General delivered on the date indicated.

# CHAPTER 1

## INTRODUCTION TO UNITED STATES LAW AND MAINE LAW

### Constitutional Law

As citizens of state and nation, we conduct our lives and pursue our livelihoods within the context of legal authority. The vehicle of that authority is the political phenomenon we call government. Government is a network of institutions and regulations designed to secure and preserve the common good. The foundation of this network is constitutional law.

For most Americans, the idea of a constitution conjures up images of tattered parchment and calligraphy. The common notion of a constitution is that of a written document, but this is not always the case.

The British explorers, who colonized the Atlantic seaboard of North America, were governed by the English Constitution, an unwritten set of tacit understandings, common practices, and accepted principles borne out of England's feudal tradition. (Acts of parliament since 1238 become part of England's Constitution.)

The American colonists established a tradition of rugged individualism which fostered a predisposition for constitutionalism; that is, the formal adoption of explicit restrictions on the authority of government. While the thought of an unwritten constitution might seem odd today, the concept of a written constitution was actually a novel idea in the mid-1700s. In fact, the Constitution of the United States was the first written constitution in the modern world; it is now also the oldest, reflecting a philosophy of individual freedom and limited government, a philosophy that evolved from generations of exploration and colonization.

The United States Constitution was and is a product of American political culture; namely, the philosophical orientation of citizens toward their government including their habits, beliefs, symbols, values and attitudes concerning the system. Unlike mass opinion, political culture tends to change very slowly. The following are significant fundamental concepts of American political culture: government should be viewed with suspicion because too much government power is an invitation to tyranny; government's role in society should be limited in favor of the greatest possible degree of individual freedom; a deeply rooted support for the institutional framework of government; high political efficacy (the feeling that any citizen can gain access to the system and make a difference); and low political participation (the fact that few people choose to be actively involved in the process). These traits are underscored by the pragmatic character of American political culture. Virtually all American government activity, including Maine property taxation, may be at least partially understood within this context.

Initially, the government of the United States of America was embodied in the Articles of Confederation. The name of this new nation was symbolically indicative of the fact that this union was more comparable to the contemporary United Nations than to our country as we know it today. The Articles of Confederation addressed the needs and intentions of separate, distinct colonies (each with its own laws, its own militia, even its own currency) joined together for the purpose of securing independence from a common enemy. Once freedom had been established, it became clear to the founding fathers that the Articles of Confederation, as written, could not provide for a central government strong enough to carry on the business of a nation or to protect the country from

future threats to its hard-won freedom. The search for a solution gave birth to our national constitution.

The United States Constitution is designed to reflect two major elements in the structure of American government. The first is a separation of powers into three branches of government: 1) a legislative branch to enact the laws, 2) a judicial branch to interpret the laws, and 3) an executive branch to administer the laws.

The second element involves the separation of government into multiple levels, national and sub-national, a concept that political scientists call federalism. The framers of the constitution intentionally fragmented governmental authority with this system of checks and balances to prevent any one individual or group from gaining ultimate control. Furthermore, the constitution was designed to be not only durable to resist rapid changes in public opinion, but also to be flexible in recognition of the need to adjust to social change.

State constitutions are generally structured in the image of the national constitution; they embody five basic principles. The first is the principle of popular sovereignty, the idea that political authority has its source in the will of the citizens, and this preserves the right to self-government. The second principle is the concept of limited government. The authority of government is limited by allowing for private property ownership, by structuring government with fragmented authority, and by requiring periodic election of public officials. The importance of governmental and social toleration is the third principle. This philosophy, which led directly to the Bill of Rights, is founded upon the premise that the more freedom and liberty there is from government intervention, the better off things will be in the long run. The fourth principle is that of limited majority rule based upon the Ancient Roman concept of republicanism (government by elected representation) as opposed to the Ancient Greek democratic society where every citizen voted on every issue. This principle of limited majority rule includes the indirect election of the president through the Electoral College, reflecting the founding fathers' fear of the dangers of too much "democracy." The fifth principle, that of equality, was based upon the belief that inequality leads to tyranny. This principle was intended to include not only equality among citizens, but also equality between states, as well as equality of economic opportunity.

Consonant with the foregoing principles and understood within the system, the Maine State Constitution may be viewed as the focal point of a legal system designed and intended to serve the best interests of the State as a whole and its citizens as individuals. It provides the means by which law may be enacted to ensure and protect an individual's rights as a citizen of state and nation. The power of taxation is an essential attribute of sovereignty, and is limited only by positive requirements or prohibitions in the U.S. and Maine Constitutions (Whiting v. Lubec). Private property is subject to public rights of taxation.

## **Statutory Law and the Legislative Process**

The principal source of law is the statute. Modern statutory law is characterized by an emphasis on detail and extensive use of definitions. It is designed to address the many situations in everyday relationships between citizens, government, and businesses. As legislatures attempt to address the problems of a dynamic and changing society, energized by the general and specific interests of constituencies, a continuous revision of state law occurs.

Maine laws are published in several volumes called *The Maine Revised Statutes Annotated*. The most recent version constitutes the tenth revision of the Statutes of Maine and was adopted in 1964, replacing the 1954 revision. Authorized by Resolves 1963, Chapter 93, the tenth revision divided the statutes into 39 titles (as of 2015, there are 52 titles). Chapters were originally assigned

odd numbers in consecutive order and section numbers were skipped at the end of each chapter. This format was intentionally employed to allow for the methodical incorporation of subsequent legislation.

Official copies of the Maine Revised Statutes Annotated are published by West Publishing Company of St. Paul, Minnesota. They incorporate a variety of helpful features at the end of each section of law. Not all of the features below are included for every section, but they do appear if applicable.

**Historical and Statutory Notes.** Historical and Statutory Notes identify the derivative source of each section from the 1954 revision, thereby linking the current law with its origin through the progression of revisions. These historical notes also include notations of amendments citing chapter and year, and often identify words and phrases that have been added or deleted.

**Cross References.** Cross References provide references to related laws and constitutional provisions.

**Court Rules.** This section includes references to procedural rules.

**Law Review Commentaries.** Law Review Commentaries include a list of published articles in law journals.

**Library References.** This section lists citations to the American Digest System, the Corpus Juris Secundum and Westlaw research.

**Research References.** Other research articles not included in one of the above areas.

**United States Code Annotated.** This section includes appropriate sections of the U.S. Code.

**Notes of Decisions.** A comprehensive array of pertinent court cases is logically organized according to topic under the heading Notes of Decisions. This annotation feature, more than anything else, is what distinguishes Maine Revised Statutes, Annotated from the Maine Revised Statutes (1954), which lists only the actual statutory laws. Selected Opinions of the Justices and Opinions of the Attorney General are also included in the annotations. The inside back cover of each volume contains a cumulative pocket supplement designed to keep the Maine Revised Statutes Annotated completely up to date as changes in the law occur.

The organization of the statutes is designed to separate ideas by structuring provisions with a uniform numbering system using the following mechanical form for the citation § 1(2)(C)(4)(e)(vi):

<b>§ 1</b>	means "section one"
<b>2</b>	means "subsection two"
<b>C</b>	means "paragraph C"
<b>4</b>	means "subparagraph four"
<b>e</b>	means "division e"
<b>vi</b>	means "subdivision six".

An unnumbered or unlettered portion of text that is blocked off (the text is indented the same as the previous subunit, but the first line is not indented) relates to the preceding subunit (numbered or lettered portion of statutory text); an unnumbered or unlettered portion in which only the first line is indented pertains to the section as a whole.

The legislative process is formally initiated when a bill is introduced or filed by a 1) legislator; by a 2) committee charged with a specific study (for example, The Speaker's Select Committee on Property Tax Reform, 1998); or 3) by a specified number of initiative petitioners. Additionally, 4) the Speaker of the House or the 5) President of the Senate may file a bill on behalf of the Governor or the Chief Justice of the Maine Supreme Judicial Court. A bill is a draft of a proposed act of the Legislature that amends an existing law or creates a new law. The legislative staff assists in drafting bills to ensure that the proposal properly addresses the intent of the sponsor while complying with the required format for legislative documents.

Each bill is filed with both the Clerk of the House and the Secretary of the Senate who recommend that the bill be referred to one of 16 Joint Standing Committees, each comprised of ten members of the House and three members of the Senate. It is then recorded on the Advance Journal and Calendar, a copy of which is placed on the desks of the members of both houses prior to the start of each day's session. Each house then votes on the referral recommendation (membership may decide to refer a bill to a Joint Standing Committee other than the one recommended).

After a bill is received by committee, a hearing on the bill is scheduled and notice of the hearing is published in major newspapers across the state under the heading "Legislative Notices." Hearings are open to the public, affording proponents and opponents an opportunity to express views and opinions in testimony before the committee. After considering the bill in Working Session, the Joint Standing Committee files either a unanimous or divided report with one of the five recommendations:

1. Ought to Pass
2. Ought Not to Pass (if this recommendation is unanimous, the bill is placed in the legislative files with no further action unless 2/3 of both houses vote for reconsideration)
3. Ought to Pass with Committee's Amendment
4. Ought to Pass in New Draft
5. Leave to Withdraw (recommendation that the bill be withdrawn by the legislator who introduced it).

Divided reports consist of either, majority and minority reports, or two evenly divided reports.

The bill is read first before the legislative body in which it originated. Two readings are required in the House and two in the Senate. First and second readings are on successive legislative days. Most bills that receive unanimous ought-to-pass or ought-to-pass with amendment reports are placed on the Special House Consent Calendar for two legislative days and considered passed to be engrossed (printed in final form) unless, on one of those days, a member of the House wishes to take the bill from the Calendar for consideration.

Each house votes on the bill after the last reading. If the House and Senate disagree, the bill may be returned to Committee or referred to a Conference Committee that is set up to compromise differences. The bill, (with amendments if necessary), is then returned for consideration by both houses. If both houses approve the bill, it is printed as it would appear as a state law.

Now in its final form, the bill is returned to each house for final passage, a process called enactment. The bill must be signed by both the Speaker of the House and the President of the Senate.

The approved bill is then sent to the governor who has the option to:

1. Sign the bill into law
2. Allow it to become law (after ten days) without signing it
3. Veto it (a veto may be overridden by a 2/3 vote of the members present in each house)
4. If the Legislature adjourns within ten days before the Governor acts, the Governor may:
  - a) sign the bill into law
  - b) refer the bill to the next session of the same Legislature; or
  - c) refuse to sign the bill with two possible results: either the bill automatically becomes law unless returned within three days of the convening of the next meeting of the same Legislature, or if the legislative session ends before the three-day period expires then the bill fails to become enacted into law (this is known as a "pocket veto").

Enacted bills and Resolves become effective 90 days after the Legislature adjourns, unless another date is specified. Emergency legislation (which requires 2/3 approval of the entire membership of both houses) becomes effective when approved by the Governor or on the date specified.

The Legislature is also the singular source of proposals to amend the Maine Constitution. Article X, section 4 provides that an amendment be initiated when approved by two-thirds of both Houses. These Constitutional Resolutions do not require the approval of the Governor, but they do require the approval of the voters at referendum. Since there is no legal provision which allows for constitutional amendment through initiative petition by citizens, it is interesting to note that, in the opinion of the Justices of the Maine Supreme Judicial Court, the Legislature, in proposing a constitutional amendment, is not exercising its power to make laws, but rather is acting as a special organ of the government for the purpose of initiating a constitutional amendment, and the Governor is not a party to the exercise of that function (Opinion of the Justices (1970)).

A publication entitled *Path of Legislation in Maine* is available through the Clerk of the House and the Secretary of the Senate and provides an excellent source of information on this topic. This publication is available on the Legislature's website at: <http://legislature.maine.gov/general/path-of-legislation-in-maine-detailed/9285>.

## **Judicial Law (Case Law)**

The task of determining the validity and meaning of legislation is a judicial function, and in that capacity, the court's interpretation of a statute can certainly shape the effectiveness of the law. Nevertheless, it is a generally accepted principle that statutes cannot be altered by a court decision, and it is also generally conceded that legislative authority is superior to that of the court. The function of the court is to interpret legislation, although there is no universal agreement on the limits of this authority. Judicial authority also includes the power to strike down a statutory provision that is deemed to be unconstitutional, to clarify or expand upon the meaning of a vague statute, as well as to overturn a prior ruling of the court.

A judicial decision has two basic functions. The first is to define and dispose of the controversy currently before the court. The manner in which the court resolves disputes is a matter of great relevance, because the second function of a judicial decision is to establish a precedent that may serve as the basis of decision for subsequent, similar cases. This very important doctrine of precedent is often called by its Latin name "stare decisis," meaning adhere to the decision. Judicial reasoning rests heavily upon not only precedent, but also analogy, the examination of a situation in comparison to the manner in which similar situations are currently regulated.

The accumulated body of judicial law includes "common law" which is the body of those principles and rules of action, relating to the government and security of persons and property that

derive their authority solely from the usages and customs of immemorial antiquity. In addition are the judgments and decrees of the courts that are known as "Case Law."

In order for the court to hear a case, three criteria must be met: jurisdiction, justiciability, and standing. Jurisdiction encompasses the court's authority, capacity, power, or right to act; original jurisdiction relates to the authority to hear a case which is being litigated for the first time, whereas appellate jurisdiction is the authority to rule on an appeal from a lower court decision. Justiciability pertains to the issue of whether or not a certain question may properly be examined in courts of justice for decision. This can be a particularly perplexing issue and, for the purposes of this text, let the following example suffice: the Legislature is responsible for determining what property is taxable and what is exempt, and whether a policy to tax or exempt is wise or unwise is a matter to be decided by the Legislature, not by the court (*Acheson v. Johnson*). To have standing (legal entitlement to bring a case before the court), the party must be aggrieved, suffer injury or loss, or allege a personal stake in the outcome of the controversy.

Maine's Constitution provides that, "The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish" (Art. VI, Sec. 1). Maine's Supreme Judicial Court, established in 1820, consists of a Chief Justice and seven associate justices holding office for seven-year terms. When sitting to determine questions of law in civil actions and in criminal trials and proceedings, the Supreme Court is also referred to as the Law Court (4 M.R.S. § 51).

The Supreme Court hears appeals of Superior Court decisions in cases involving property taxation. Those Superior Court rulings are handed down in what is described in Chapter 11 as the third step in the statutory appeal procedure. The Superior Court, created by the Legislature in 1929 consists of sixteen judges who hear cases individually in each of Maine's sixteen county seats on a rotating schedule.

## **Administrative Rules**

It is not uncommon for the Legislature to address an issue by enacting a statute in which the wording is necessarily broad and general. In doing so, the Legislature exercises its prerogative to delegate detailed decision-making authority to career professionals within the Executive Branch. Although recent trends indicate a tendency to limit administrative authority through greater specificity in legislation, the policy-implementation function of government agencies frequently requires clarification and definition of legislative intent.

To encourage public participation in the administrative rule-making process, the First Regular Session of the 108th Legislature enacted the Maine Administrative Procedure Act (PL 1977, c. 551) that established minimum standards for the adoption and implementation of administrative rules. To ensure that an adopted rule carries the weight of law, detailed procedures must be strictly followed (5 M.R.S. § 8001 et seq.).

In response to an expressed need for an administrative guideline, a proposed rule (or rule amendment) is drafted in an established format. Newspapers publish a consolidated advertisement that provides "Notice of Agency Rule-Making Procedures"; in each case, the proposed rule is summarized, the schedule for the public hearing (if any) is announced, instructions for submission of comments are specified, and an agency contact person is identified. In addition to this public notice, interested parties, who, upon request, have been placed on a mailing list, are notified directly by the agency of the proposed rule. Once the goals of public access and input have been met, an agency's decision to adopt a rule must be approved by the Attorney General's Office. At the time of adoption, the agency must file a statement with the Secretary of State explaining the factual and policy basis

for the rule, and include the rationale for the inclusion or the refusal to include suggestions made by the public.

A petition submitted to a state agency by at least 150 registered voters of the State to adopt or change a rule would require that agency to commence rule-making proceedings within 60 days. The responsibility for verification of the petition before a Notary Public is borne by the circulator. Standard forms are available from the Secretary of State.

## **Legal Opinions**

Because statute law is sometimes written in broad, perhaps even ambiguous terms, questions frequently arise from specific situations relating to the application of the law.

Sometimes these questions may warrant a legal opinion. In such instances, government has two options. In some cases, Maine's Attorney General may be called upon by either the executive or the legislative branch of government to provide a legal opinion (5 M.R.S. §195). This written opinion of the Attorney General usually takes the form of a legal brief which: (1) states the facts of the situation; (2) phrases the legal questions which must be answered (after citing the appropriate legal reference, these questions are usually constructed in such a way as to elicit a yes or no response); (3) answers the question; and (4) supports the answer with the appropriate legal reasoning which often employs the judicial concepts of precedent and analogy.

As a second option, but only under carefully specified conditions, the Governor, the Senate, or the House of Representatives may solicit an advisory opinion from the Justices of the Supreme Court (Art VI, sec. 3). Such decisions are without precedential value, and the rule of "stare decisis" (a decided precedent) is not applicable. The opinions emanate from individual justices, and not from the Court as a whole. Opinions are limited to important questions of law and upon solemn occasions, and are published in the Maine Reporter in conjunction with the decisions of the Court.

## **Rules of Statutory Construction**

When legal authorities are faced with interpreting statutory law or constitutional provisions, they look primarily to the language of the law. Words and phrases are construed according to the common meaning of the language unless the result is inconsistent with the plain meaning of the statute (1 M.R.S. §72 (3)). If the language is clear and supported by consistent judicial interpretation, there is no need to look beyond the language of the statute. Statutory law should be read according to the natural and most obvious meaning of its language without resorting to subtle or forced constructions for the purpose of either limiting or extending their operation, unless there is a clear record of legislative intent to the contrary.

Legislative intent, if determinable through the language of a statute, must always prevail in analyzing the effect of a statute and any conflict in resolving the meaning of a law should be resolved in favor of legislative intent. The court's role is to implement apparent legislative intent even though the result may reveal an error of judgment or oversight by the Legislature (Canning v. State Dept. of Transportation). In determining intent, the court may look to legislative history of a statute, the statement of fact on the legislative document, the policy objectives of the Legislature and the entire body of related law. However, post-enactment commentary is not legally recognized as legislative history.

Statutes are not construed contrary to the overall purpose intended by the Legislature if it is possible to interpret them favorably in the context of the legislation taken as a whole. Any

restrictions or limitations not specifically included in a statute will not generally be added by judicial interpretation, especially if the restriction or limitation is prejudicial to the public good (Lewis v. Robbins).

Legislation enjoys a presumption of constitutionality and law is declared unconstitutional only when there is overwhelming certainty as to its legal defect. Although the courts will make every effort to interpret a statute with a consideration to the purpose or policy goals of the Legislature, such considerations have no weight or merit in deciding issues of constitutionality.

There is also a presumption that the Legislature did not intend unreasonable consequences, nor results contrary to the public interest. (Schwanda v. Bonney). This presumption favors, for example, the validity of municipal ordinances and proceedings.

The court has held that the construction of a statute directed at administrative officials whose duty it is to make the statute operative is entitled to great deference by the court when it is called upon to interpret the meaning of the statute. However, if there is a conflict between a statute and relative administrative regulations promulgated by the administering agency, then the statute controls.

When statutes that impose or enforce a tax burden on citizens are susceptible to more than one interpretation, the court will generally interpret the statute in a light most favorable to the citizen (Blaney v. Shapleigh). Furthermore, the statutory procedures for collection of taxes are subject to a strict construction rule. Full compliance with the procedures for enforcing collection of a tax are required and essential to the validity of the process of perfecting collection of tax debts.

The provisions of the statutes are severable. If any provision of a statute or a session law is invalid, or if the application of either to any person or circumstances is invalid, such invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application (1 M.R.S. § 71(8)). When an unconstitutional portion of a statute is separable from, and independent of, a valid portion, the invalid portion may be rejected and the valid portion retained. For example, the partial unconstitutionality of 36 M.R.S. § 653 providing for a veterans' tax exemption contingent on a ten-year residency requirement did not necessarily result in defeating the whole legislation, even though the legislation did not carry a severability clause (Lambert v. Wentworth). A statute that does not specify an effective date is assumed to apply only prospectively from the date it becomes law and the courts will imply retroactive intent only when a law is clearly inoperative except for a retrospective application.

Whenever two statutes, enacted at different times, are so mutually inconsistent that they cannot effectively stand together, then this is viewed as a legislative intention that the last-enacted statute should repeal the first. The first-enacted statute is thus repealed by necessary implication. Although there is a presumption against repeal by implication, the court has ruled that when it is clear that an earlier statute annuls the entire purpose of a later statute covering the same subject matter so that the retention of the former could not have been a reflection of the most recently manifested legislative intent, then the earlier statute must be regarded as repealed by implication.

# CHAPTER 2

## MAINE CONSTITUTIONAL PROPERTY TAX PROVISIONS

### Historical Overview

The Constitution of the State of Maine contains several broadly stated guidelines pertaining to taxes in general and property taxes in particular. This chapter will examine the importance and meaning of these provisions because they serve as the legal foundation for property taxation in Maine.

Maine became the 23rd state to join the Union when it was admitted by Congress on March 15, 1820. The Act of Separation between Maine and Massachusetts provided that the laws then in force in Maine remain in force until altered or repealed by Maine's Legislature, except for those laws which were:

*“inconsistent with the situation and condition of said new State, or repugnant to the constitution thereof.”*

Thus Maine embarked on its property tax administrative life with a body of Massachusetts law. In 1820, the Maine Constitution contained three tax-related sections, Article I, section 22, Article IX, section 7, and Article IX, section 8.

Article I, section 22 currently states:

*“No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature.”*

Article IX, section 7 currently states:

*“While the public expenses shall be assessed on estates, a general valuation shall be taken at least once in 10 years.”*

Article IX, section 8 currently states:

*“All taxes upon real estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.”*

The concept of just value is key to property tax equity. The courts have interpreted just value to mean market value and the Legislature has enacted a statutory definition which attempts to identify important elements to be considered in determining just value. 36 M.R.S. § 701-A.

The just value provision in Article IX, section 8 was amended in 1876 to include personal property. Exceptions to this provision have occurred only three times. In 1970, Maine voters approved an amendment allowing the Legislature to establish current use valuation laws for farm, forest, open space, game management, and wildlife sanctuary lands. In 1978, voters allowed the Legislature to approve an alternate cost sharing formula for school districts that apportioned the tax burden among jurisdictions on other than just value. In 2005, the voters approved that the

Legislature could establish current use valuation laws for land that is used for, or supports, commercial fishing activities.

The first exception to just value relates to current use valuation in the case of certain lands. Current use valuation means that land is valued based on the price the land could be sold for in an arms-length transaction if the land was restricted to its current use. The Maine Tree Growth Tax Law, enacted in 1972, provides for the valuation of qualifying forest land on a productivity basis. These values are determined by the State Tax Assessor in accordance with statutory guidelines. Reimbursements are provided to municipalities based on the reduced valuation.

The other classes of land that are granted the benefits of current use valuations are covered under the Farm and Open Space Tax Law which has evolved from its original enactment in 1971. Valuations for land classified under this law are determined by the local tax assessor, utilizing guidelines established by law. In administering the Tree Growth Tax Law, the Farm and Open Space Tax Law, and the working waterfront law, the assessor must decide whether land is eligible for classification. Each law levies a penalty for the withdrawal or change of use of land.

Although the exceptions to just value are limited to these three situations, Maine law does allow for exemptions. The Maine Supreme Court in a 1945 advisory opinion explained the Legislature's latitude concerning the constitutional requirement of equal apportionment and assessment. The full power over taxation is vested in the Legislature including power of determining upon what kind and classes of property taxes shall be imposed, and what shall be exempt from taxation and is limited only by the positive requirement and prohibitions of the Constitution. (Opinion of the Justices (1945)) Thus property tax exemptions are provided by statute except those few required by federal law or the Articles of Separation. It is interesting to note that until 1845, Maine law merely listed those categories of property to be taxed. Subsequently the law has required more or less general taxation, with enumerated exemptions.

Article IX, section 8 of the Constitution was amended in 1915 to allow the Legislature to apply a different rate on intangible personal property. In 1961 the Legislature amended the definition of personal property so that it no longer included intangibles, thus they are excluded from taxation.

In addition to the alternate cost sharing formula for school districts, another related constitutional provision was approved by the voters in 1978. Article IV, Section 23, reads:

*"Municipalities reimbursed annually. The Legislature shall annually reimburse each municipality from state tax sources for 50% of the property tax revenue loss suffered by that municipality during the previous calendar year because of statutory property tax exemptions or credits enacted after April 1, 1978. The Legislature shall enact appropriate legislation to carry out the intent of this section."*

The driving force behind this amendment was the Maine Municipal Association. Because reimbursement was fixed at 50%, the state and the municipalities equally shared the burden of exemption (Effective January 1, 1984, the provision was amended to require reimbursement from tax sources for not less than 50% of the property tax revenue loss suffered by municipalities.)

Although Article IX, section 7 requires a general valuation at least once in ten years, that section works in conjunction with Article IX, section 8 (property must be assessed equally according to just value). The result is a general requirement for municipalities to make an effort, at least every ten years, to review property values with the goal of maintaining equity within the municipality. This requirement may or may not lead to a formal revaluation of all property in the municipality. A general valuation is not the equivalent of a professional revaluation.

Regarding Article IX section 7, the Maine Supreme Court stated in 1894:

*"The two sections 7 and 8... must be construed together, to determine their scope and extent. Section 7 provides that, so long as the public expenses shall be assessed on polls and estates, to equalize the burden as nearly as practicable, a general valuation shall be taken as often as every ten years. By its terms, it necessarily implies a periodical and regularly recurring assessment of predetermined amounts, proportioned to the entire estates within the taxed district, to meet continuing and regularly recurring expenses; while section 8, manifestly referring to the same class of general taxes, provides for an equal apportionment and assessment according to value."* (State v. Hamlin)

Two other provisions dealing specifically with taxation are worthy of mention in setting the constitutional framework. Article I, section 22 and Article IX, section 9, provide:

Article I, section 22: *"No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature."* (contained in the constitution as originally enacted.)

Article IX, section 9: *"The Legislature shall never, in any manner, suspend or surrender the power of taxation."* (Added in 1876 by Amendment XVII.)

These two somewhat complementary mandates have insured that property tax statutes remain the province of the people either by statewide referendum or through the Legislature.

A final comment concerning constitutional impact on property tax law relates to the assessment appeal process. An appeal process is guaranteed by the equal protection and due process requirements of the Maine Constitution. The State has in turn established specific statutory guidelines.

## Just Value Clause

**Just Value.** The concept of "just value" is the key to the primary goal of property taxation: equity. Equity is achieved when all taxable property is properly assessed, and no property owner is obligated to pay more or allowed to pay less than a fair share of the property tax burden. However, since property taxation is the product of an appraisal function, and because property appraisal is a partially subjective process, the achievement of complete equity remains an elusive challenge. Nevertheless, every assessor is charged with the responsibility of striving for the greatest degree of equity possible (Moser v. Phippsburg).

Article IX, section 8 of the Maine Constitution, known as the "just value clause" is fundamental to property taxation in Maine:

*"All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."*

The broadness and generality of this provision display qualities that are characteristic of constitutional provisions. The phrase "[a]ll taxes upon real and personal estate" is commonly taken to mean all property taxes. A tax levied on the ownership of property is a property tax. On the other hand a tax is imposed on a particular use of property or on a certain power over property that is incidental to ownership is an excise tax rather than a property tax. For example, Maine's motor

vehicle excise tax is imposed for the privilege of operating a motor vehicle over the public ways (36 M.R.S. §1482(1)(C)). More than a century ago, the courts sharpened the distinction between property taxes and excise taxes by employing the following two-part test (State v. Western Union).

The first part of the test concerns the method used to establish the tax rate. A unique feature of the property tax is its predetermined amount; by virtue of a procedure whereby project funding is specifically appropriated as part of a formal budgetary process, administrators decide in advance how much revenue to raise through the property tax. This amount is then generally divided by the total taxable value to determine the tax rate. In contrast, an excise tax rate is pre-set and usually established by the Legislature at a level designed to generate a certain amount of revenue. The more abstract and less obvious second part of the test involves an examination of the central issue: the object of the tax. An excise tax is generally limited to property that is used for a specific purpose or in a specific business and only while it is used in that capacity; a property tax is inherently broader in its application. A critical element is the statutory definition of the object of the tax, because the fact that a tax may be statutorily labeled an excise tax does not necessarily make it so. Additionally, enforcement through a direct lien on the property is characteristic of a property tax, whereas the dedication of excess revenues to industry related activities is indicative of an excise tax. The distinction is important because property taxes are bound by the constitutional just value provision; excise taxes are not (Eastler v. State Tax Assessor).

The phrase “assessed by authority of this state” underscores the fact that municipalities administer the property tax completely absent of the power to tax, as distinguished from the governmental capacity to administer a tax. In other words, the Legislature delegates administration of property tax to the municipalities, but retains the power of taxation (including the power to impose tax on or exempt certain property) for itself. This hazy distinction becomes clearer in light of the following points. Article IX, section 9 provides that, “The Legislature shall never, in any manner, suspend or surrender the power of taxation.” Note the use of the word “shall” as opposed to the word “may”; such word selection demonstrates the legislative intent to deny or permit discretion in the application of a law. This important shall/may distinction appears often and it warrants careful attention. “Shall” is ordinarily interpreted to mean “must” or “will,” while “may” usually indicates an option. On the strength of this provision, all the legal power of taxation in Maine is vested exclusively in the Legislature, because the sovereign right of taxation is vital and essential to the very existence of government (Morris v. Goss). Of course, this does not supersede the federal government's authority to levy a national tax to which Maine citizens would be subject, such as the federal income tax; but it does prohibit municipalities from adopting policies which would infringe in any way upon the Legislature's taxing power. For instance, municipal officials motivated by an imperative for economic development might attempt to negotiate a deal to limit the tax liability of a facility with a significant impact on the local economy. Such instances of intentional under-taxation of certain property necessarily results in the over-taxation of other property, thereby imposing an additional burden on other taxpayers in the municipality and infringing on the Legislature's powers of taxation and exemption, and the Legislature cannot constitutionally transfer this power to municipalities (Brewer Brick Co. v. Brewer).

This issue touches upon the important concept of the intergovernmental relationship between municipalities and the state. The national constitution and the Constitution of Maine both intentionally omit any mention of counties, cities, towns, etc. and as a result, the existence of these political entities has no constitutional foundation. In fact, municipalities are merely local agencies of the state with absolutely no element of sovereignty (Baxter v. Waterville Sewerage District). Municipal power is derived exclusively from the Legislature either as an incident of incorporation or by express statutory provision (State v. Rand). Municipalities act in a dual capacity: the first, a corporate capacity to own and manage real estate, execute contracts, sue and be sued; the second, a governmental capacity to discharge duties imposed by the Legislature including responsibility for

social welfare, public school operation, the construction and maintenance of public roads and bridges, and the assessment and collection of property taxes (Libby v. Portland).

The phrase “shall be apportioned and assessed equally” mandates that all classes of taxable property (land, buildings, personal) and all classifications of property (agricultural, residential, commercial, industrial, etc.) be subject to the same tax rate and valued at the same ratio to just value or market value (Kittery Electric Light Co. v. Kittery). This is in contrast to other states that allow personal property to be subject to a different tax rate than real estate. This phrase may seem to be redundant due to the apparent synonymy of the words “apportioned and assessed”. The distinction between the two is that apportionment involves dividing the tax burden into various shares, whereas assessment refers to the procedure of charging property owners with their specific shares of that burden; it's the difference between cutting up the pie and serving the pie.

The equal taxation requirement does not carry an implication that the benefits arising from taxation should be enjoyed by all people in equal degree, nor that each person should participate in each particular benefit (Sawyer v. Gilmore).

The final phrase of Article IX, section 8, “according to the just value thereof” is the pivotal point of this constitutional law. Although the Legislature has frequently amended the statutory definition of just value (36 M.R.S. § 701-A), the courts have consistently maintained that just value is market value; that is, the price that a property will bring on the open market between a willing seller and an unrelated, knowledgeable buyer under normal conditions. Although professional manuals provide for three different accepted approaches to value (the cost approach, the income approach, and the market approach), the method of arriving at just value for tax purposes is left to the discretion of the assessor (Shawmut Inn v. Kennebunkport). However, the assessor must consider all three approaches in assessing property. Regardless of the effect of economic factors (such as a stock market crash) on the relative worth of property, the true value of real estate should be viewed as fairly constant and based upon measurably stable conditions over a period of time (Sweet v. Auburn).

Just value is often interpreted to be the market value of property within the context of that property's highest and best use. This terminology reflects the belief that market value is dependent, in large part, on the potential for development that is inherent in a particular property. Sales data often supports a positive correlation between potential for development and highest market value. However, just value is statutorily defined as that value arising out of presently possible land use alternatives, taking into account several factors including: current use, physical depreciation, functional and economic obsolescence, as well as any enforceable restrictions limiting the use of the property such as zoning laws, subdivision regulations, and any recorded contractual provisions such as conservation easements (36 M.R.S. §701-A).

## Other Provisions

In addition to the just value provision, the Constitution addresses certain topics relating to property taxation as identified below.

**Intangible Personal Property.** Article IX, section 8 also empowers the Legislature to provide for the taxation of intangible personal property such as stocks and bonds. Such personal property is not currently subject to property tax in Maine.

Although the Legislature has authority to exempt any particular class of property, it does not have authority, except in the case of intangible personal property to provide for one method of assessment for one class of property and another method for another class.

**Current Use Assessments.** Article IX, Section 8, subsection 2 gives the Legislature the option of providing for the assessment of certain types of real estate in accordance with a valuation based upon a "current use" approach, provided that property so classified would be subject to certain penalties upon withdrawal from classification. Unlike highest and best use, the current use approach is intended to result in taxation which encourages the preservation and protection of certain natural resources against the ever-encroaching pressures of residential, commercial and industrial development. The Legislature exercised this option in 1971, and the reader is directed to the Current Use Assessments section of Chapter 6 for full discussion of this subject.

**School District.** Article IX, section 8, subsection 3 grants the Legislature the power to provide that taxes may be assessed on property according to any cost-sharing formula that it may authorize. School districts are authorized to issue warrants to the assessors of member municipalities requiring them to assess an amount equal to that municipality's share of the district's cost for education. A town cannot refuse to raise the district tax since the town is acting merely as a collection agent for the district (Opinion of the Attorney General, March 4, 1980).

**Watercraft.** Article IX, section 8, subsection 4 provides that, beginning 1984, all watercraft as defined by the Legislature, is exempt from property tax, provided that the watercraft is subject to an excise tax. The excise tax on watercraft is retained by the municipality in which it was collected.

**General Valuation.** Finally, one section of the constitution has been a source of confusion and misunderstanding. Article IX, section 7 provides that: "While the public expenses shall be assessed on estates, a general valuation shall be taken at least once in ten years." This statement is frequently misconstrued to require a municipality to engage the services of a professional revaluation company at least every ten years. However, this interpretation does not make sense in light of the fact equity in assessments can generally be maintained without the need for these costly revaluations. Arguably, municipalities could minimize the chances of under- or over-assessment of property by revaluing it every year. This constitutional provision sought to balance the need for frequent revaluations against their cost by adjusting the maximum period municipalities could assess property without revaluing them.

Sections 7 and 8 of Article IX of the constitution must be construed together to determine their scope and intent. Section 7 insists that so long as public expenses are assessed against estates, a general valuation should be undertaken at least every ten years to equalize the burden as nearly as practicable. It implies a regularly recurring assessment proportionately assessed against all taxable estates in the taxing jurisdiction to finance the regularly recurring public expenses. Section 8 manifestly refers to the same class of general taxes and requires an equal apportionment and assessment according to a just value. These sections contemplate only the general, constantly recurring assessment upon the same property (State v. Hamlin).

Article IV, Part third, section 1 of the Maine Constitution grants the Legislature power to make and establish all reasonable laws and regulations for the defense and benefit of the people of the state, not repugnant to state and federal constitutions. This authority underlies the requirement that taxation must be for a public purpose or use, that is, for the benefit of the people. The exercise of the power to tax involves two steps, both of which are within the sole province of the Legislature. First, the determination of the nature of tax to be imposed, and second, the effective imposition of the tax in such a way to ensure its collection and availability for the purposes for which it was raised (Auburn v. Mandarelli). Stated differently, the form and extent of taxation rests with the Legislature, except for any limitations expressly imposed by the constitution (Greaves v. Houlton Water Co.).

The Legislature cannot bind itself so as to prevent a future change or repeal of a statute.

Taxes are neither a demand nor a debt, but rather an imposed duty creating an obligation to pay without necessity of any consent or agreement by the taxpayer (State v. Keith). Property taxes are an expression of constitutionally founded state sovereignty. Government has a right to secure revenue sufficient to maintain the preservation of public peace, health and safety.

Taxation at the state or local level must be for a public purpose to satisfy constitutional requirements. A corollary of that statement is that the expenditure of public funds must also be for a public purpose. (Maine State Housing Authority v Depositors Trust Co.). Traditionally, public purposes appeared to be limited to purely governmental activity that affected all of the residents of a municipality directly. However, in recent years these have been defined as purposes, potentially private in appearance, that would prevent economic loss to a community (Delogu v. State), or enhance employment opportunities in the community (Common Cause v State). It is the above two cases upon which the basis for Tax Increment Financing is grounded.



# CHAPTER 3

## THE OFFICE OF THE ASSESSOR

Property taxes in Maine are administered at the local level by nearly five hundred organized municipalities (cities, towns, and plantations). In addition, approximately half of the State's land area is comprised of unorganized townships. The assessment function of these townships is performed by the Property Tax Division of Maine Revenue Services (36 M.R.S. § 302).

The municipal property tax assessor, although an employee of a municipality, is a public official performing a function in accordance with State laws. (Young v. Johnson). Furthermore, the municipal assessor is directly subject to the control and supervision of the State Tax Assessor who, as head of Maine Revenue Services, has the responsibility to ensure that all property taxes in Maine are assessed in compliance with the laws of the State (36 M.R.S. § 201).

For a property tax assessment be valid, all statutory requirements regarding that assessment must be satisfied. These statutory requirements may be grouped into two general categories. The first is that the money must be raised by a vote of the municipal legislative body (town meeting, town council, or city council), and this must be done at a meeting that has been legally called and notified (36 M.R.S. § 503). It is important to note, however, that if money raised for an illegal purpose (see Chapter 4) is assessed together with legally raised money, the assessment is still valid (Boothbay v. Race). Although any person who pays such a tax may recover from the municipality that part of the tax that was not legally raised, it is not the responsibility of the assessor to determine whether or not municipal appropriations are lawful. The second category of requirements is that the assessor must be qualified to hold office as assessor in addition to being properly selected and installed (Vigue v. Chapman). Any tax that is assessed by an assessor who has not met every statutory requirement is void and uncollectible (Springfield v. Butterfield).

### Qualifications for the Office

To qualify for the office of municipal property tax assessor in any Maine city, town, plantation, or primary assessing area, an individual must be at least 18 years old, a resident of Maine and a citizen of the United States (30-A M.R.S. § 2526). If an individual is also a selectman, that individual must also be a registered voter of that town. If only one member of the board of assessors is not legally qualified to hold office, the other members cannot assess a valid tax (Machiasport v. Small). In addition, full-time professional assessors are required to be certified by the State (36 M.R.S. §§ 312 & 327(3)). This requirement is detailed later in this chapter under the heading of "Training and Certification."

For conflict of interest reasons, municipal treasurers and tax collectors may not be assessors for the municipality in which they serve as treasurer and/or collector (Otisfield v. Scribner); the same restriction applies to Boards of Assessment Review and County Commissioners (30-A M.R.S. §§ 2526 & 2552). Furthermore, judges and legislators may not be assessors. This is because assessors, as agents of the state, exercise their authority as members of the executive branch of state government; and Article III, Section 2 of the Maine Constitution prohibits any individual from exercising political authority in more than one branch of government (executive, legislative, judicial) at any given point in time.

The conflict of interest that renders the office of assessor incompatible with other municipal offices is based on ethical grounds. An assessor who also serves as tax collector would be in a

position to use the collector's authority to cover up mistakes made as an assessor. The same conflict arises in the offices of assessor and treasurer. Similarly, an assessor who is also a member of the same municipality's local board of assessment review could be in a position to hear appeals arising from the discharge of one's duties as an assessor; the same holds true for assessors who would also be county commissioners. However, this prohibition of incompatible offices does not prevent one municipality's tax collector or treasurer from legally performing the assessment function in another municipality.

Judicial proceedings regarding these matters often distinguish between a "de jure" board of assessors and a "de facto" board of assessors. These terms originate in Latin; "de jure" means according to the law, while "de facto" means "in fact," and refers to the appearance of authority. A de jure board of assessors is one in which each and every member is statutorily qualified, properly selected, and legally sworn into office as an assessor (Dresden v. Goud). By contrast, de facto assessors, while appearing to hold office and exercise authority, cannot assess a valid property tax, and any tax assessed by de facto assessors cannot be legally enforced. Even if only one member of a board of assessors is de facto, the assessment is void (Williamsburg v. Lord). For example, a tax collector who has not had final settlement with a town is ineligible for the office of assessor and although formally elected, regularly sworn, and may have acted as assessor, he is merely an assessor de facto. (Otisfield v. Scribner)

The importance of ensuring qualified assessors is critical to the economic stability of a municipality and its capacity to guarantee an uninterrupted source of revenue and effective tax collection procedures.

## **Selection of Assessors**

The following provisions relating to the selection of assessors for cities, towns and plantations do not apply to any municipality that is included in a primary assessing area or designated as a primary assessing unit (30-A M.R.S. §§ 2526(6)(H) & 2552(2)(F)). Primary assessing areas are discussed at the end of Chapter 5.

**City Assessor.** Unless the city charter provides otherwise, city assessors and their assistants are chosen on the second Monday of March to serve for one year. The city charter specifies the number of assistants to be elected. However, regardless of city charter provisions, a city council may by ordinance provide for the appointment of a single assessor for a term not to exceed five years (30-A M.R.S. § 2552(1)(C)).

**Town Assessors.** At a meeting of the legislative body held at least 90 days before the annual meeting, a town may decide to appoint a single assessor or elect a board of three, five, or seven assessors; most boards consist of three members. If a town fails to fix the number of assessors, three shall be elected (30-A M.R.S. § 2526(5)(A)(2)). If one member of a board of assessors is not properly sworn in, the tax assessed by that board is invalid. The board is considered a de facto board, even if most of the members are properly sworn in. (Williamsburg v. Lord). However, if all members of the board of assessors are properly sworn in and one member subsequently leaves his or her position, the remaining members continue to operate as a legal board. In towns where the town meeting is the legislative body, the determination shall be effective only if the total number of votes cast for and against the determination equals or exceeds ten percent of the total vote in that town for all candidates for Governor in the most recent gubernatorial election (30-A M.R.S. § 2526(5)(A)). Once such a determination has been made, it stands until revoked at a meeting held at least ninety days before the annual meeting (30-A M.R.S. § 2526(5)(A)(1)). In the absence of a town charter provision to the contrary, the municipal officers of

any town, or the municipal officers of two or more towns acting jointly, shall have the power to enact an ordinance providing for a single assessor (30-A M.R.S. § 2526(5)(b)).

An elected board of assessors may be chosen by written ballot at open town meeting (30-A M.R.S. § 2528). In a town of fewer than 4,000 residents (according to most recent decennial census), election shall be by majority (to win, a candidate must receive more than half of the votes cast); in a town of more than 4,000 population, or a town of any size population which uses a secret ballot, election shall be by plurality (the candidate with the most votes wins) (30-A M.R.S. §§ 2526(1) & 2528(10)). If a town has not elected a full board of assessors, selectmen themselves will serve as members of the board of assessors (30-A M.R.S. § 2526(5)(C) & 36 M.R.S. § 703). A selectman who is an assessor pursuant to this provision may resign the position of assessor without resigning the office of selectman. The selectmen may then appoint a qualified person to fill the vacancy in the board of assessors (30-A M.R.S. § 2602(2)). In those instances where a town has opted to have a single assessor, the selectmen shall appoint that assessor to serve for a term not exceeding five years (30-A M.R.S. § 2526(5)(A)(3)). Appointment shall be in writing and signed by the appointing party or parties (30-A M.R.S. § 2526(2)).

In any action against a municipality, if the record is silent as to the mode by which the assessors were elected, it is presumed that they were chosen in the manner required by law, unless there is proof to the contrary (Hathaway v. Addison).

A municipality that elects a board of assessors may designate one member to be the chairperson. If the municipality fails to do so, the chairperson is elected by ballot from its own membership. In the event that no member receives a majority vote, the municipal clerk shall determine the chairperson by lot (30-A M.R.S. § 2526(5)(D)(1)). The chairperson presides over meetings, but the chairperson's powers and duties are neither greater nor less than those of other individual board members. Boards of Assessors act by majority (36 M.R.S. § 709), and their authority is exercised as a group. The action by majority clause provides that a partial board of assessors may legally conduct business provided that a complete board was originally constituted. For example, a three-member board is properly elected and duly sworn into office in March. If a vacancy occurs in May when one member resigns, the two remaining members may commit taxes, sign warrants, and conduct board business as a majority, provided that they are in agreement. Any disagreement will result in a deadlock, and if such an occurrence were to become the rule rather than the exception, the selectmen may then appoint a qualified person to fill the vacant position.

Although the statutes do not appear to limit the terms of members of boards of assessors, it is generally conceded that the term may not exceed five years. Many municipalities provide for staggered terms for board members, with one or more positions coming up for election each year, thereby ensuring a degree of continuity in office and stability in administration. If the term of office is not fixed, it shall be for one year (30-A M.R.S. § 2526(5)(A)(2)).

If a municipality neglects to choose assessors for three months after any warrant for a county or school district tax has been issued, or if the duly chosen assessors have neglected to assess and certify such tax, the State Treasurer or the treasurer for that county may so notify the county commissioners. Upon receipt of such notification, the commissioners shall appoint three or more suitable persons from the county to be assessors for that municipality (36 M.R.S. § 705).

Elected assessors may not be removed from office prior to the expiration of their term. After providing appropriate notice and hearing, the selectmen may remove an appointed single assessor for good cause.

A vacancy in the office of assessor may occur as a result of non-acceptance, resignation, death, removal, permanent disability or incompetence, failure to qualify for the office within ten days

after written demand by the municipal officers, or failure of the municipality to elect a person to office (30-A M.R.S. § 2602). When such a vacancy exists, the selectmen may appoint a qualified person to fill that vacancy (30-A M.R.S. § 2602 (2)).

**Plantation Assessors.** Plantations are the simplest form of organized municipal government in Maine. Consistent with the conception of plantations as transitional forms of government, many plantations have become incorporated as towns. The statutory provisions relating to the method of election and the term of office for town assessors (30-A M.R.S. § 2526(5)) apply also to plantation assessors, provided the plantation is not part of a primary assessing area. Organized plantations elect three assessors at their annual meeting; if money is raised for the repair of roads and bridges, the plantation assessors choose one or more road commissioners in the same manner employed by town selectmen. (30-A M.R.S. § 7004)

**Chief Assessors in Primary Assessing Areas.** Lewiston is the only municipality currently designated as a primary assessing unit. In a primary assessing area, the selection of assessors is governed by municipal ordinances or charter provisions (36 M.R.S. § 471). Since the enactment in 1973 of 36 M.R.S. Chapter 104, no group of municipalities has elected to be designated as a primary assessing area. Provisions relating to the selection of the chief assessor of a primary assessing area are fully described in the statutes 36 M.R.S. § 471 – 474.

**Assessors' Agents.** It has become a common practice for municipalities with elected boards of assessors to employ individuals to provide professional assistance in the administration of the local property tax. There are currently no laws that specifically govern the activity of assessors' agents. The ever-increasing demand for experienced assessors is, in part, a result of the manner in which the services provided by these advisors allows municipalities to strike a balance between tradition and practicality; the part-time board of assessors embodies the tenets of home rule and local control, while professional assistance makes it possible for the board to satisfy the responsibilities of an office whose duties continually become increasingly technical and complex.

Although the law does not require assessors' agents to be certified by the state, most agents are certified. At least one certified assessor must be employed by a professional assessors agent. In spite of the fact that a board may merely "rubber-stamp" the work of the agent, all of the legal assessing power and responsibility continues to rest with the board of assessors (Frank v. Skowhegan). Assessors' agents have no actual legal assessing authority, and they are not required to take an oath of office. Local assessors must remain informed about the methods used by hired professionals and they must use their local knowledge to check the accuracy of an appraiser's recommendations.

## **Oath of Office**

After being legally qualified and properly selected, it is imperative that each and every assessor be sworn into office as an assessor (Dresden v. Goud) before assuming the duties of office. The law which requires assessors to be "duly sworn" is satisfied when the assessors take an oath "faithfully and impartially to perform the duties assigned them" (Patterson v. Creighton). If no assessors have been elected and the selectmen are to act as assessors, the selectmen must be sworn into office as assessors, even if they have already been sworn into office as selectmen. County commissioner appointed assessors must also be duly sworn (36 M.R.S. § 705).

The oath may be administered by the moderator in open town meeting (Brownville v. U.S. Pegwood and Shank Co.), by the municipal clerk, or by any other person authorized by law to administer an oath, including a notary public or dedimus justice. (30-A M.R.S. § 2526(9)). If a member of a board of assessors is sworn by a person who is not authorized to administer an oath of

office, any tax assessed by that board is invalid (Orneville v. Palmer). If the oath is administered by a person who is not the clerk, then the person administering the oath shall present the official being sworn with a certificate to be returned to the clerk for filing, and that certificate shall state the name of the person who administered the oath as well as the date when the oath was taken (30-A M.R.S. § 2526(9)(A)). In the absence of any record evidence that the assessors were duly sworn, the fact may be proved by parol testimony; that is, an oral declaration (Hathaway v. Addison).

After town meeting, the clerk must issue a constable a warrant containing the names of people who were chosen for office, but who have not been sworn into office. Those individuals shall be summoned by the constable to appear before the clerk within seven days to take the oath of office (30-A M.R.S. § 2526(9)(C)).

Article IX, Section 1 of the Maine Constitution presents the recommended form of the oath as follows:

"I, \_\_\_\_\_ do swear, that I will support the Constitution of the United States, and of this State so long as I shall continue a citizen thereof. So help me God."

"I, \_\_\_\_\_ do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as the assessor of the municipality of \_\_\_\_\_ according to the Constitution and laws of the State. So help me God." (Patterson v. Creighton)

In the event that the incumbent is conscientiously reluctant to taking an oath (presumably on grounds of religious convictions), affirmation may be substituted; that is, after the administrator of the oath recites, "Do you, \_\_\_\_\_ swear (affirm) that you will . . . so help you God?", the incumbent simply responds, "I do."

An assessor who knowingly adopts a valuation system, which is intentionally designed to produce inequitable assessments, violates the oath of office (Shawmut Manufacturing Co. v. Benton).

## **Compensation for Assessors**

Primary assessing areas and municipalities are required to pay assessors a reasonable compensation and actual expenses incurred in complying with the requirements of Title 36, including costs to attend meetings and schools which are offered by the State Tax Assessor (36 M.R.S. § 206). At its annual meeting, if a town fails to fix the compensation for assessors, each assessor shall be paid ten dollars per day for every day actually and necessarily employed in the service of the town (30-A M.R.S. § 2526(5)(E)).

## **Liability of Assessors**

Assessor's liability is the legal responsibility or obligation to be held accountable for wrongful losses or damages that someone might suffer as a result of an assessor's actions. As a general rule, property tax assessors are responsible for their own personal faithfulness and integrity. Assessors are not responsible for any tax that they are by law required to assess; that liability rests solely with the municipality for whose benefit the tax is assessed (36 M.R.S. § 702) (Bristol v. Eldridge). However, the provisions of § 702 afford no protection to persons who perform the duties of the office of assessor without having been elected or appointed as an assessor. Such person would be personally liable for the acts of a collector to whom they have issued a warrant for the collection of taxes assessed by them (Allen v. Archer). If it is alleged that assessors were not

properly elected and the record is silent as to the mode by which they were elected, unless there is proof to the contrary, it is presumed that the assessors were chosen in the manner required by law (Hathaway v. Addison).

The statute does not exonerate assessors for the assessment of a tax against a person of another town or state who is not liable to taxation by them. Assessors are liable for any assessment that they are not by law required to assess. Assessors are also liable for collection actions resulting from an illegal assessment because the overlay was exceeded (Mosher v. Robie).

An assessor who refuses to assess a state, county, or municipal tax as required by law, or who knowingly omits or fails to perform any duty imposed by law, commits a civil violation that is subject to a fine not exceeding \$100 (36 M.R.S. § 704).

Although an assessor generally escapes liability in the performance of his official duties, costly and embarrassing litigation against a municipality could reflect negatively on the assessor's performance. Prudent assessors combine expert knowledge of law with public relations skills to avoid unnecessary conflict.

**Public Right to Know.** Assessors must be familiar with Maine's Freedom of Access Act (1 M.R.S. § 400 – 414). This provision ensures that virtually all assessors' records are open to public inspection. Every person has the right to inspect and copy any public record during regular business hours (1 M.R.S. § 408). Such public records would include, but not necessarily be limited to, the valuation book, commitment forms, property record cards, property tax maps, and the declaration of value forms relative to Maine's Real Estate Transfer Tax (36 M.R.S. § 191(2)(K)). Exceptions to the Right to Know Law extend the protection of confidentiality to certain types of records, including: information contained in property tax abatement requests due to hardship or poverty, and hearings and proceedings which are conducted regarding such an appeal must be held in executive session (36 M.R.S. § 841(2)); certain public housing authority records (30-A M.R.S. § 4706); abandoned property records (33 M.R.S. § 1971); as well as a variety of personnel and employment records (5 M.R.S. § 17057; 20-A M.R.S. § 6101; 30-A M.R.S. § 2702).

It is well within the authority of the assessor to arrange for records to be available for public inspection at regularly scheduled times or by appointment. In municipalities where there is no town office or where there are no regular hours when the assessors meet, assessors must reasonably make their records available to all persons requesting inspection or copying such records. The Right to Know Law, for example, would certainly not require an otherwise busy assessor to interrupt an ongoing task to respond to an unexpected request for a list of all two-, three-, and four-family homes in town. However, any willful attempt to defeat the legislative intent of the Right to Know Law is a Class E crime (1 M.R.S. § 410).

If an assessor believes that it is proper to refuse permission to inspect any record which the assessor has in custody, a written statement including the reasons for the denial must be issued within ten days of receipt of the request. Any person aggrieved of such a denial may appeal within ten days to Superior Court (1 M.R.S. § 409).

**Miscellaneous Liabilities.** Certain types of misconduct or neglect of duty on the part of an assessor could result in liability. For example, abatement denials or valuation schemes which are intentionally discriminatory based upon the owner's race, creed, national origin, etc. would violate the federal Civil Rights Act of 1871 (42 USC § 1983). Such willful violation could expose an assessor to personal liability for damages.

Beyond the protection afforded to the assessors in Section 702 of Title 36 (" . . . liability [for an assessment rests] solely with the municipality for whose benefit the tax was assessed. . ."),

assessors generally enjoy personal immunity from civil liability in discharging official duties (14 M.R.S. § 8111). Municipalities may purchase insurance to protect employees from personal liability that may incur in exercising legal authority (14 M.R.S. § 8116); assessors would be prudent to attempt to secure such protection when negotiating conditions of employment.

## **Powers and Duties**

Property tax assessors in Maine occupy a unique place in the governmental structure, fulfilling a dual role of municipal official and agent of the State (Young v. Johnson). Municipalities cannot exert any legal control over the actions of municipal assessors, since they instead are subject to the supervision and control of the State Tax Assessor in the discharge of their official duties (36 M.R.S. § 201). The State Tax Assessor is empowered to take all necessary and legal means to ensure fulfillment of the intent of the law (36 M.R.S. § 301). Assessors are required to obey all warrants received by them, and to govern themselves by 36 M.R.S. §§ 301 - 329 and 501 - 1121 (36 M.R.S. § 701).

**Assessment.** The definitive duty of property tax assessors is to annually ascertain as accurately as possible the nature, amount, and value of all taxable property as of April 1, and to estimate and record separately the land value, exclusive of buildings, for each parcel of real estate in the municipality (36 M.R.S. § 708). In no other capacity is the assessor's integrity more important.

Tax assessors have a constitutional obligation to assess all property fairly, equally, and according to just value, and it is presumed that assessors act in good faith and in conformity with legal requirements (Frank v. Skowhegan). Uniformity and equality in the constitutional and statutory sense do not require mathematical exactitude in the valuation of property for tax purposes, but the percentage of true value must be consistent for all taxable property (Kittery Electric Light Co. v. Kittery). Neither the constitution nor the statutes expects assessors to make assessments where all values are so exact that no expert could disagree (Sears, Roebuck & Co. v. Presque Isle). In arriving at value for assessment purposes, assessors must consider only that value arising from presently possible land use alternatives to which the parcel in question may be put, while considering all relevant factors including restrictions, easements, current use, physical depreciation, as well as functional and economic obsolescence (36 M.R.S. § 701-A). Tax valuation is necessarily based upon the opinion and judgment of the assessor unless it can adequately be shown that, under the circumstances, the valuation in question is unreasonable and results in an overassessment which is either discriminatory, fraudulent, dishonest, or illegal (Maine Consolidated Power Co. v. Farmington). There is a presumption of good faith and conformity to legal requirements attached to the acts of assessors in determining just value (Cumberland County Power and Light Co. v. Hiram).

**Tax Year and Fiscal Year.** Property taxes in Maine are assessed annually on the basis of the status of property as of April 1, and the taxable year is April 1 through March 31 (36 M.R.S. § 502). This does not mean that property taxes are assessed on April 1; it only means that the property tax is assessed on the basis of who owned what and where on April 1. Regardless of when the tax is actually assessed, conditions existing on April 1 determine property tax liability (Bucksport v. Woodman). This statutorily defined tax year is often confused with the municipal fiscal year which starts and ends on the dates when a municipality "opens and closes its books" for the annual budget. The starting and ending dates for a municipal fiscal year are determined by local preference. A few municipalities still use the calendar year as their fiscal year, although the majority have changed to a July 1 through June 30 fiscal year (30-A M.R.S. § 5651) which corresponds with that of the State. Property taxes upon the transfer of a property are usually prorated between buyer and seller according to the municipal fiscal year (36 M.R.S. § 558). This generates considerable confusion because many people believe that they pay property taxes from April 1 through March 31 when, in fact, April 1 is only a statutorily prescribed benchmark to determine, through property

valuation, an owner's equitable share of the municipality's expenses for that budget year. The confusion is sometimes compounded by the assumption that the fiscal year in question must include the April 1 upon which the tax status is fixed, but there is no such legal requirement.

A deed cannot be backdated prior to April 1 by a seller to transfer liability for tax. A deed does not transfer title until it has been delivered to the buyer (Egery v. Woodard).

**Inventory of Taxable Property; Physical Inspection; Tax Lists.** As soon after April 1 as is practicable, the assessor should begin the first step in the assessment process, which is to update the existing records regarding the nature (land, building, personal), amount (size and number), and value of all taxable property (36 M.R.S. § 708). There are two approaches to building an accurate list of property and its just value, and assessors should employ both methods in combination for optimum results.

The primary approach involves visual inspection, and the accuracy of the list of property and its just value generally corresponds to the thoroughness of this inspection. Assessors are required to physically inspect each taxable account at least every four years (36 M.R.S. § 328(7)). Failure to do so will not invalidate the tax, but it will most likely result in inequitable valuations and numerous appeals. Boards of assessors should perform this work as a group to maintain consistency in judgment, especially with regard to determinations of condition and obsolescence. If time constraints necessitate dividing the work among members of the board, it is imperative that the board, as a whole, review these findings so that differences in judgment can be reconciled prior to assessment (Champion International Corp. v. Bucksport).

The requirement for assessors to physically inspect does not supersede the property owner's right to privacy. The assessor has no legal authority to trespass onto property where the owner denies access. In such instances, the assessor should make the most accurate listing possible from the closest allowable viewing points. If insufficient information is available, it is not unreasonable to assume the highest estimate of property characteristics commensurate with what has been specifically viewed. Owners who refuse to allow the assessor to properly inspect the property jeopardize the success of any subsequent appeal of the assessment. An assessor's estimate of value is based upon an analysis of known facts. To deprive the assessor of factual information is tantamount to encouraging application of his imagination, rather than his technical skills and informed judgment.

Another, but not mutually exclusive method of developing an accurate list of property and its just value involves the use of taxpayer lists (see Property Tax Bulletin No. 2) (36 M.R.S. § 706). These lists have been known in some areas as "domesday lists," or "doomsday lists" a term which refers to the Domesday book kept by William the Conqueror describing all the lands and estates of persons in England after his conquest of that country in the 11th century. Before making an assessment, assessors may give seasonable notice to all persons liable to taxation within that jurisdiction to furnish the assessors with true and perfect lists of all their taxable estates as of April first (36 M.R.S. § 706). "Seasonable," which is neither defined by statute nor by judicial holding, is taken to mean "*on or about April first*." "Notice" is defined under 36 M.R.S. § 111(2). The notice should state the deadline for filing the list; the time frame should be reasonable enough to allow the taxpayer to comply, and that deadline must come before the assessment is to be made (Maine Lumber Co. v. Mechanic Falls). The word reasonable is necessarily ambiguous. The facts in each particular case will determine what is and what is not reasonable (Farrelly v. Deer Isle). If the assessors neglect to give notice to file the list, their assessment is still valid (Rockland v. Farnsworth). If an assessor requests more than just a list of property with the seasonable notice (for example, value of property and asset life), and the property owner does not respond, the assessor cannot later deny that owner participation in the abatement request process.

There is no statutorily prescribed form for the taxpayer list. Samples are provided in Property Tax Bulletin No. 2, and standard types of such forms are available through various printing houses.

In fulfilling the requirement to file "true and perfect lists," the taxpayer need not specify the value of the property that is being declared (Orland v. County Commissioners). In cases where the taxpayer is uncertain of his ownership in the property (for example, if the title is in dispute or litigation), those facts may be stated in the list (Dead River Co. v. Houlton). If a property is exempt, it is not necessary to include it in the list (Holbrook Island Sanctuary v. Brooksville). A taxpayer who furnishes the list timely by whatever means suggested in the assessor request letter satisfies the requirements of this section (Perry v. Lincolnville).

Assessors may take a reasonable amount of time to examine the furnished lists (Perry v. Lincolnville), and they may require the person filing the list to make an oath as to the accuracy of the information (36 M.R.S. § 706). Section 706 also allows the assessors to make additional inquiries into the nature, situation, and value of the taxable property, and a taxpayer who refuses or neglects to answer all such inquiries forfeits the right to appeal to the county commissioners or the local board of assessment review for an abatement (Lambard v. Kennebec County Commissioners).

Section 706 provides that the taxpayer's "list and answers shall not be conclusive upon the assessors." This means that the assessors are not required to assess according to the information as it appears on the list; in fact, the assessors are at liberty to make whatever additions, deletions, or alterations are warranted to produce an equitable assessment (Gilpatrick v. Saco).

This statute makes the failure of a taxpayer to furnish the required list of taxable real and personal property a bar to application for abatement and it should be rigorously enforced even in cases of an innocent misrepresentation or misrepresentation of the facts by the taxpayer (Dead River Co. v. Houlton). If, however, the assessor accepts an abatement request from a taxpayer who has not furnished a list as requested by the assessor, the assessor is deemed to have waived the list requirement regarding that taxpayer.

If the taxpayer fails to file the list and the notice was given by mail, the taxpayer forfeits the right to appeal the assessment; unless the list is filed with the abatement application and the assessors are satisfied that the taxpayer was unable to file the list at the time appointed. On site investigation of the property by an appraiser hired by the assessors does not relieve the taxpayer of the obligation to file a list (Maine Lumber Co. v. Mechanic Falls). However, the right to appeal the assessment is not forfeited if the taxpayer claims that the notice was never received and the assessors have no proof (such as a certified mail return receipt) that the notice was ever sent.

Municipalities are unlikely to incur the cost of certified mail for sending tax list notices to all taxpayers, even in a revaluation year. However, there is nothing in the law that prevents assessors from using certified mail selectively to send the tax list notice to certain property owners; in fact, many assessors find that it is advantageous to send the notice by certified mail to the highest taxpayers, the largest personal property accounts, and those owners with a history of appealing their assessments.

**Commitment of Taxes.** Commitment is the assessor's act of delivering the tax lists to the collector, together with the certificate of commitment, the certificate of assessment, and the collector's warrant. The certificate of commitment names the collector, the total amount to be collected, and the date of the commitment; it must also be signed by a majority of the assessor(s) (36 M.R.S. § 709). The certificate of assessment certifies the commitment book by indicating the number of pages in the book, the year of the tax, the date of the commitment, and the signatures of the assessor(s). The collector's warrant is the legal instrument that authorizes and compels the

collector to perform the duties of tax collection. The commitment forms must be signed by a majority of a board of assessors (Johnson v. Goodridge); failure to do so invalidates the assessment (Pearson v. Canney). A certificate of assessment must also be returned to the appropriate treasurer for any tax included in the assessment; that is, to the municipal treasurer for the municipal appropriations, to the county treasurer for the county tax, to the Treasurer of State for a state tax, if any, etc. (36 M.R.S. § 712).

Forms used for the commitment of taxes are prescribed by the State Tax Assessor (36 M.R.S. § 753), who has the power to enforce their use (36 M.R.S. § 205)

The tax list (Commitment book) must show the real estate tax, personal property tax, and total tax due for each taxpayer account (Norridgewock v. Walker).

The deadline for the commitment of taxes may be established by municipal vote (36 M.R.S. § 505 (1)). If no date is established, common sense dictates that property taxes should be assessed before payment is due, although nothing in the law indicates that failure to do so would invalidate the tax. In any event, statistics from a completed assessment are necessary to answer the questions on the annual Municipal Valuation Return (36 M.R.S. § 383) which is required to be filed with the Property Tax Division by November 1 or within 30 days from the date of commitment, whichever occurs later.

Assessors should specify in the collector's warrant the date by which collections are to be completed and by which time the collector is to settle the accounts with the municipality for that tax. This settlement date may not be less than one year from the commitment date to allow the collector sufficient time to complete the collections; if no settlement date is fixed, collectors must perfect (complete) their collections within two years from the commitment date (36 M.R.S. § 760).

Before taxes are committed, the municipal officers (plantation assessors, town selectmen/councilmen, etc.) are responsible for ensuring that the collector furnishes a suitable bond (a written obligation to guarantee payment of a specified amount). Upon approval and acceptance, the bond must be recorded by the clerk in the municipal records (36 M.R.S. § 755).

**Assessment Records.** Before taxes are committed, assessors are required to make a permanent record of the assessment to be kept in the assessor's office that, if there is no official office, is the place where assessors regularly meet to conduct business. This permanent record must contain the invoice (inventory of taxable property including descriptions sufficient to uniquely identify the property) and the valuation from which the assessment is made (36 M.R.S. § 711). Separate valuations must be shown for land, buildings, and personal property (36 M.R.S. § 708). A proper record of the assessment is prerequisite to the effective enforcement of the tax (Baker v. Webber). However, the failure to deposit and keep a copy of the valuation book does not invalidate the assessment (Greene v. Lunt). Supplemental assessments must be documented by attachment in the valuation book of a certificate of assessment signed by the assessors stating that the tax was omitted from the original assessment by mistake (Topsham v. Purinton).

Every five years, exempt property must also be listed in the assessor's inventory (but not in the tax list) together with the assessor's estimated full market value of that property (36 M.R.S. § 707). Exemption valuation is required to be reported on the annual Municipal Valuation Return (36 M.R.S. § 383).

Recommended guidelines relating to the specific form and content of property tax valuation books are detailed in Property Tax Bulletin No. 15.

## **Training and Certification**

The imperative goal of property taxation is equity. That goal may best be achieved under the guidance of competent, professional administration. The cornerstone of professionalism in assessment administration is sound knowledge and experience in the various requirements of the vocation.

Since July 1, 1980 professional assessors are required to be certified by Maine Revenue Services (36 M.R.S. § 327 (3)). A professional assessor is defined as any person employed full-time by one or more municipalities who devotes at least 75% of work time to assessment administration (36 M.R.S. § 306(5)). Violation of this certification requirement is a civil infraction carrying a fine of \$100 to \$250 (36 M.R.S. § 312). As an information service to municipalities, a listing of certified assessors is available from the Property Tax Division of Maine Revenue Services (36 M.R.S. § 327 (3)).

Any municipal assessing unit may employ a part-time, non-certified assessor, but when any municipality employs a full time, professional assessor, this assessor must be certified by the Bureau of Revenue Services. (36 M.R.S. § 327(3))

The Property Tax Division holds qualifying examinations at least four times each year (36 M.R.S. § 310). These examinations are usually held at the offices of the Property Tax Division. There are three professional property tax designations conferred by Maine Revenue Services: Certified Maine Assessor ("CMA"), Certified Assessment Technician ("CAT"), and Certified Maine Assessor, Inactive\Retired. MRS Rule 205.01. CMAs and CATs must complete at least 16 hours of classroom training each year to maintain their certification in good standing (36 M.R.S. § 311); the term "hours of classroom training" is defined for this purpose as clock hours, not college credit hours (36 M.R.S. § 306(2)). Certificates are subject to revocation for failure to fulfill recertification requirements (MRS Rule 205.1(C)(7)).

In support of this continuing professional education requirement, Maine Revenue Services sponsors three basic courses in assessment administration leading to certification as a CMA or a CAT. The courses are offered at various locations across the state during the academic year through the auspices of local adult education departments or regional vocational institutes. These basic courses are also offered at the Maine Property Tax School, a week-long summer workshop which features a review course for certification candidates and advanced courses for recertification credit. Specifics of the training and certification program are detailed in Property Tax Bulletin No. 22, and administrative rules relating to the certification of assessors.



# CHAPTER 4

## FISCAL MATTERS

### Property Tax Appropriations

A municipality may legally raise or appropriate money for a number of statutorily specified purposes such as operating expenses, public works, schools and libraries, health and welfare, development, celebrations and commemorations, general duties and operations. A municipality may also appropriate federal and state grant money received to purposes approved by the grants. 30-A M.R.S. §§ 5721 - 5730. Due to the home rule provisions of the Maine Constitution (Article VIII, Part second) and statute (30-A M.R.S. §§ 2101 – 2109), these approved purposes are not necessarily all inclusive. A municipality may raise and appropriate money for some legal purpose that is not specified in the statute, as long as that purpose does not conflict with any other provision of the Constitution.

An example of an illegal purpose occurs when a municipality uses tax money to pay the property taxes of disabled homeowners. This purpose constitutes an exemption from property taxation, and infringes on the constitutional power of taxation that is vested exclusively in the Legislature under Article IX, section 9.

As a rule, the assessment of a property tax is legal only if residents vote in favor of the amount to be raised at a meeting legally called and notified. 36 M.R.S. § 503. It is not the assessor's responsibility to determine whether or not municipal appropriations are lawful. An assessment is still valid notwithstanding that money raised for an illegal purpose is assessed together with legally raised money (Boothbay v. Race). Any person who pays tax that is partially used for an illegal purpose may recover from the municipality that portion of the tax that was not legally raised, 25% interest and costs, and damages sustained by reason of the illegal assessment. 36 M.R.S. § 504.

If the county commissioners assess a tax greater than 2% more than the amount authorized to be raised, the entire tax is void.

### Tax Rate and Overlay

A property tax rate is computed by dividing the amount to be raised by the total taxable valuation. A property tax rate, 0.0235 for example, is typically expressed in terms of the amount of revenue the rate will generate for every thousand dollars of taxable valuation. That, in this case, is \$23.50. Consequently, the tax rate is also commonly referred to as the mill rate (mill is defined as one-tenth of a cent or one-thousandth of a dollar). The computation of the tax rate is generally assumed to be the assessor's responsibility; however, the law is actually silent on the question of who determines the tax rate. It is a good idea for the assessor to collaborate with the town manager and the finance director when determining the tax rate.

Under certain circumstances, fractional differences may occur in the computation of individual tax bills. For example, the tax rate of 0.0235 times a valuation of \$125,250 produces a tax of \$2,943.375 which would be rounded up to yield a fractional difference of one-half cent. Either adjusting the tax rate or rounding the valuations may easily avoid fractional differences; in the above

example, an "even" rate of 0.023 or 0.024 would suffice, or rounding all valuations to the nearest hundred would also eliminate the fractional difference.

Although the accuracy of automated tax billing programs has virtually erased the traditional disadvantages posed by fractional differences, the avoidance of fractional differences tends to result in a "cleaner" product.

Even if it were possible, it would not be practical to select a tax rate which would exactly produce the amount to be raised through the property tax. Since the property tax would fail to serve its purpose if it produced less than the amount needed to be raised, a tax rate is selected which is expected to generate an amount in excess of the amount needed to be raised. This surplus, called an "overlay," must not exceed the amount to be raised by more than 5% (36 M.R.S. § 710); if it does, the entire assessment is void (*Mosher v. Robie*). The purpose of § 710 is to allow for convenience and practicality in the selection of a tax rate, and the unavoidably small amount of excess revenue is merely an incidental by-product of that administrative convenience. The Legislature never intended that the overlay be used to build a "kitty" of unappropriated surplus funds, and municipalities, which do so by engaging in a policy of consistently assessing the maximum allowable overlay may jeopardize the validity of their property tax by inadvertently exceeding the overlay amount. It is also unwise to develop a dependence on an unappropriated surplus fund and the lack of budgetary control, which could result.

## **Due Dates and Interest Rates**

**Due Dates.** When discussing property tax payment schedules, it is important to differentiate between the terms, "payable," "due," and "overdue." The terms "due" and "payable" may appear to be used interchangeably, but a distinction does exist: all due taxes are payable, but not all payable taxes are necessarily due yet.

- (1) Property taxes are considered to be "payable" from the time they are formally committed by the assessor to the tax collector, at which time the collector is legally authorized to accept payment of taxes and is duty-bound to employ all available legal means to secure payment.
- (2) Property taxes are "due" as of a specified date established annually at the municipality's discretion; balances, which remain outstanding after that date, may accrue interest.
- (3) Taxes are "overdue" after the due date established by the municipality and generally accrue interest from that date. Statutes often refer to overdue taxes as "delinquent."

At the meeting when a municipality votes on a budget, it may also vote to determine when the tax lists must be committed, when property taxes are due, the rate of interest on overdue taxes and whether or not a discount (referred to in law as an abatement) is to be allowed for taxes paid prior to a specified date (36 M.R.S. § 505). Depending on the particular form of municipal government, these decisions are made either by the city council, the town council, or the voters at town meeting.

When a municipality fails to vote on a date when the tax lists are to be committed, the law is silent on this issue. Because the time frame for abatement appeals is based on the commitment date (36 M.R.S. § 841), property taxes should be committed as soon as practicable. If the municipality establishes a date when taxes are due, commitment should obviously occur prior to that date.

**Interest.** If a municipality elects to charge interest on overdue taxes, it must not only establish a due date from which interest will accrue, but it must also specify the rate of interest by

vote. That rate may not exceed the maximum rate annually determined by the State Treasurer, provided to the chief municipal officer in writing by January 20. Municipalities are encouraged to charge the maximum allowable interest rate to encourage prompt payment. A vote to charge interest applies only to that year's tax, and it can have no impact on taxes assessed in subsequent years; decisions relating to interest on overdue property taxes must be voted upon annually (Snow v. Weeks).

Interest is added to and becomes part of the tax (36 M.R.S. § 505(4)). This means that if a taxpayer insists upon paying only the overdue tax while refusing to pay the interest thereon, a lien may be attached to compel payment of the interest. A valid lien threatens the owner's title in the property, regardless of how small the unpaid lien amount may be. (36 M.R.S. §§ 552 & 612). Unless the taxpayer specifies in writing how the payment is to be apportioned, the tax collector has complete discretion and will generally apply payments to the oldest tax first. This method may leave a tax balance that continues to accrue interest. It is not legal to charge interest on interest but only against an unpaid tax.

The method used to compute interest can be very important because a lien based on illegal interest is invalid. This could undermine a municipality's ability to enforce payment of delinquent property taxes. For example, if the maximum allowable interest rate is 12% per year, it is not uncommon for interest to be charged at 1% per month or any portion thereof. Assuming that taxes are due September 1 and two taxpayers each have a \$1,000 tax bill, the one who pays on October 1 is charged \$10 interest; however, the one who pays the very next day is charged \$20 interest. The method of 1% per month or any portion thereof results in the second taxpayer being charged interest at an effective annualized rate of almost 24%, which exceeds the legal maximum. To avoid this potential irregularity, particularly with respect to perfecting a lien, interest is usually charged at a daily rate. This, in the above example, would be 12%, divided by 365 days or 0.000328. The first taxpayer's interest charge would have been  $.000328 \times 30 \text{ days} \times \$1,000 = \$9.84$ ; the second taxpayer's interest would be \$10.17, a more reasonable and legally defensible result.

Occasionally, a municipality considers instituting a payment policy that involves an interest "grace period." For example, if the tax due date was September 1 and taxes unpaid after January 1 were to accrue interest back to September 1, this would constitute an inappropriate grace period for interest payments. A taxpayer paying his taxes on the last day of the year would pay no interest, yet one paying two days later would be charged for 17 weeks of interest. Such retroactive interest is illegal because it constitutes a misuse of the establishment of interest rates. 36 M.R.S. § 505(4). It involves an illegal exercise of discretion to charge interest on some overdue taxes but not on certain others. All overdue taxes are subject to the interest provisions that the municipality approves by vote.

The statutorily prescribed method for achieving this objective is provided in 36 M.R.S. § 505(5). At the meeting when the municipality votes to raise a tax, it may also vote to partially abate taxes that are paid prior to a specified date (or dates, if the municipality has multiple payment dates, for example, half of the tax is due September 1 and the second half is due the following March 1). The abatement, sometimes called the "discount" and which must be specified by vote, must not exceed 10%. The treasurer must post notification of this vote within seven days after the commitment date. This means that, if the town approved the legal maximum, a taxpayer with a \$1,000 bill would only have to pay \$900 if the tax is paid in full by the date specified.

At any properly called meeting, a municipality may authorize its tax collector or treasurer to accept prepayment of taxes which have not even been committed yet, and to pay interest at a rate not exceeding 8%. If the actual tax turns out to be less than the prepaid amount, the excess must be repaid; and the municipality must pay interest on the excess amount back to the date of overpayment. 36 M.R.S. § 506. This provision is rarely, if ever invoked. Nevertheless, any

taxpayer who pays an amount in excess of what is finally assessed (as in the case of a taxpayer who pays under protest, appeals the assessment, and is granted an abatement) must be repaid the amount of the overpayment plus interest back to the date of the overpayment at a rate established by the municipality. That rate may not exceed the interest rate established by the municipality for overdue taxes reduced by four percentage points; however, the rate may not be less than 8% nor greater than 12%. If the municipality fails to set a rate, it must pay interest at the rate it has established for delinquent taxes. 36 M.R.S. § 506-A.

## **Tax Bills**

Our constitutional form of government places an emphasis on the balance between rights and responsibilities. Property ownership is a basic right, and that right is balanced against certain responsibilities, not the least of which is to know what the taxes are and when they are due. In fact, there is no law in Maine that requires municipalities to send out tax bills. Although every municipality issues tax bills every year, this is done out of tradition and common practice, not out of any statutory requirement (Clark v. Gray).

Notwithstanding the absence of any legal requirement to send tax bills, there is a statutory provision relating to the form and content of municipal property tax bills requiring that the due date be clearly stated and that a statement be included which indicates how the tax has been reduced as a result of state-municipal revenue sharing, state reimbursement for the Maine resident homestead property exemption and state aid for education. 36 M.R.S. § 507. The Property Tax Division annually provides the necessary information to satisfy the latter requirement.

Some taxpayers are under the misconception that a property tax bill is a legal document for which the municipality may be held liable with regard to errors or misprints, and that a defective tax bill invalidates the tax. There is nothing in the law to substantiate such a claim. The tax bill is nothing more than an informational service which in no way diminishes the taxpayer's responsibility to satisfy any property tax obligations.

## **Fiscal Year Changes**

A fiscal year is the period between one annual time of settlement or balancing of accounts and another; in other words, the period between the time of opening and closing the books for an annual budget. Most Maine municipalities operate on a fiscal year that begins July 1 and ends June 30, which coincides with the state fiscal year.

The law provides that, in the course of changing fiscal years, a municipality make either one or two assessments based upon a single valuation, provided that the taxes raised are based upon appropriations made for a fiscal year that does not exceed 18 months. 30-A M.R.S. § 5651. If the fiscal year in question is 18 months, most municipalities send a six-month tax bill, covering the 13<sup>th</sup> to 18<sup>th</sup> month period; this is also used as a convenient starting point to institute semi-annual billing which promotes a more stable revenue flow. The major drawback with this approach involves the administrative difficulty resulting from the number of ownership changes that occur in the interim.

When real estate is transferred from one person or party to another, it is common for the persons to pro-rate the taxes owed on the property. A purchaser of real estate may agree with the previous owner or party to whom the real estate was previously taxed to pay the proportional share of taxes. Unless otherwise specified by the parties to their agreement, the taxes shall be prorated over the period of the fiscal year of the municipality in which the real estate is located. 36 M.R.S. § 558.

# CHAPTER 5

## ADMINISTRATION

### Property Tax Division of Maine Revenue Services

for the State Tax Assessor is responsible for property tax administration in Maine (36 M.R.S. § 301). Municipal tax assessors are agents of the State (Dillon v. Johnson); their actions and decisions are governed by state statutes (36 M.R.S. § 701). The Property Tax Division plays an integral role in this intergovernmental relationship.

The division's primary responsibilities consist of:

- (1) Administering the annual state valuation program;
- (2) Performing the property tax administration function for the unorganized territory; and
- (3) Providing technical support services for assessors, collectors, taxpayers, legislators, and other governmental agencies.

The Property Tax Division manages the training and certification program for assessors as well as administering certain state taxes such as the Real Estate Transfer Tax (36 M.R.S. §§ 4641 – 4641-N), the Commercial Forestry Excise Tax (36 M.R.S. §§ 2721 – 2728) and the State Telecommunications Excise Tax (36 M.R.S. § 457). The division also oversees the enforcement of the statutory assessing standards (36 M.R.S. §§ 326 – 331).

**State Valuation.** State grants-in-aid are a vital cog in the machinery of municipal finance. The formulas used to calculate the various municipal shares of state financial assistance employ a variety of variables, including valuation of taxable property. For the state aid to be distributed equitably, the variables used in the formulas must be consistent; that is, the valuation figures must reflect the same percentage of market value for every municipality. Municipalities are required to assess at no less than 70% of just value for property tax purposes (36 M.R.S. § 327), but within that constraint there is great variability. Through a process called state valuation, the Property Tax Division annually develops an equalized valuation of every organized municipality and the unorganized territory (36 M.R.S. § 305(1)). The finished product lists each organized municipality and unorganized township along with its 100% valuation rounded to the nearest \$50,000. The State Tax Assessor certifies this valuation to the Secretary of State by February 1 (36 M.R.S. § 305(1)).

State valuation is the basis for apportioning the county tax. It is also a variable in the formulas for state-municipal revenue sharing, road assistance (highway block grants), general assistance (welfare) grants and, the largest piece, state aid for education.

The state valuation, filed with the Secretary of State by February 1, reflects the 100% taxable valuation as of April 1, two years prior (MRS Rule 201.1(W)). This means that a state valuation filed on February 1, 2016 reflects municipal values for the year 2014. The State Board of Property Tax Review hears appeals from any municipality that is aggrieved by Maine Revenue Services' determination relative to that municipality's state valuation (36 M.R.S. § 272).

The details of the state valuation process are explained in Property Tax Bulletin No. 1. The rules and bulletins published by the Property Tax Division are available on the MRS website.

**Publications.** A major goal of the Property Tax Division is to compile and disseminate current and historical information to interested citizens and government agencies at all levels. The goal is accomplished in large part through the distribution of various publications, some of which are described below.

**Law Book.** State of Maine Laws Relating to Property Taxation is a compilation of statutory provisions pertaining to property taxation in Maine. This "Blue Book" of property tax laws is the primary reference supplement to this text. Since 1984, the law book is drawn from the state's computerized statutory database made available by the Revisor of Statutes Office. This format eliminates the errors that were almost impossible to avoid when the material was type set.

**Annual Statistical Summary.** The Municipal Valuation Return (36 M.R.S. § 383) which assessors are required to file annually with the Property Tax Division is compiled into a statewide statistical summary which is available on the MRS website.

**Basic Courses; Assessment Manual.** Texts for three basic courses in assessment administration are maintained and are available free to all course participants and to other interested individuals. In addition, the Property Tax Division is required to publish a list of Certified Maine Assessors and professional assessing firms (36 M.R.S. § 327(3)). The State Tax Assessor is also required to maintain and periodically update an assessment manual (36 M.R.S. § 331), copies of which are available from the Property Tax Division for a reasonable fee.

**Assessment Forms.** The State Tax Assessor, through the Property Tax Division, annually prescribes the forms to be used in the commitment of municipal property taxes (36 M.R.S. § 753); assessors must use these forms, and the State Tax Assessor is empowered to enforce their use (36 M.R.S. § 205).

**Rules.** Maine Revenue Services is authorized to promulgate administrative rules and regulations necessary to carry out its duties and responsibilities (36 M.R.S. § 305(5)). Copies of specific rules are available on the MRS website.

**Bulletins.** Certain portions of the law generate commonly asked questions or pose particular administrative problems. Those areas of the law are published in the form of Property Tax Bulletins that explain these selected statutory provisions in plain language. These bulletins are intended to serve as guidelines in understanding, interpreting, and applying the law to everyday situations. They provide additional instructional material and do not carry the weight of law.

## **Assessing Standards**

Since 1979, municipalities have been subject to assessing standards requiring a 70% minimum assessment ratio and a maximum quality rating of 20 (36 M.R.S. § 327). Assessment ratios and quality ratings are the focal points of residential ratio studies conducted annually by the Property Tax Division in conjunction with the annual State Valuation and to assist municipal assessors with the statutory requirement to annually conduct sales ratio studies (36 M.R.S. § 328 (8)).

The assessment ratio measures the average relationship between the market value of properties as measured by sales price and the local assessment for those properties. In general, a property that was assessed for \$70,000 but sold for \$100,000, reflects a 70% assessment/sales ratio for that property. The assessment ratio for an entire municipality, determined by the state, takes into consideration all arms-length sales of improved residential property in that municipality. The ratio of a municipality's total taxable valuation to its state valuation (the state-equalized measure of the total

taxable valuation of the municipality) is the measure used for computing the assessment ratio for purposes of assessing standards. By requiring a 70% minimum for this measure, the Legislature accepted the proposition that uniform assessment practices are easier to achieve at close to market levels because taxpayers can more easily judge the fairness of their assessment.

The quality rating is a measure of the uniformity of local assessing practices. It is a measure of the average difference between the assessment ratios of specific properties and the average assessment ratio for the municipality.

The assessing standards were the centerpiece of property tax reform legislation of the mid-1970s, designed to promote and develop greater equity and improved property tax administration.

In 1976, the last year before the implementation of the standards, the average Maine municipality had a 44% assessment ratio and a quality rating of 42. In 2013, the average Maine municipality had an assessment ratio near 97% with a quality rating of about 13. Most impressive is the fact that over 96% of all Maine municipalities maintain full compliance with the minimum requirements of the assessing standards.

## **Revaluations**

Revaluation is the most common approach used to regain compliance with the statutory 70% minimum ratio requirement (36 M.R.S. § 327(1)). Any revaluation falls under the jurisdiction of the municipal assessor whose judgment, as opposed to that of any hired appraiser, is final (30-A M.R.S. § 5722(7)).

Professional assessment firms performing revaluations in Maine are required to employ at least one Certified Maine Assessor, and must agree to provide the municipality with information necessary to conduct future revaluations (36 M.R.S. § 330(1)).

The State Tax Assessor is required to develop and maintain a model contract for revaluation services (36 M.R.S. § 330(2)). Specifications for a tax equalization program are detailed in Property Tax Bulletin No. 3. The State Tax Assessor is also statutorily required to promulgate administrative rules and regulations relating to professional assessment firms (36 M.R.S. § 330(1)). A copy of these Revaluation Guidelines (MRS Rule 208) is available on the MRS website.

## **Real Estate Transfer Tax**

A tax is imposed upon both the buyer and the seller for the privilege of transferring and receiving title to real property (36 M.R.S. § 4641-A). The Property Tax Division administers this real estate transfer tax.

Whenever a deed is offered for recording at a Registry of Deeds, it must be accompanied by a real estate transfer tax declaration of value form (36 M.R.S. § 4641-D); certain types of transfers are exempted from this requirement. This form requests the selling price or value of the property is sent to the assessor for the municipality where the transferred property is located. In the aggregate, the selling prices allow the assessor to determine the current level of assessment relative to market value, to make projections of future assessment levels, and develop plans to update assessments to maintain compliance with the minimum requirements of the statutory assessing standards (36 M.R.S. §§ 326 – 331).

## **Primary Assessing Areas**

Primary assessing areas are established by order of the State Tax Assessor; a copy of such an order is filed with the office of the Secretary of State (36 M.R.S. § 304). The State Tax Assessor is required to review primary assessing areas at least every ten years, and any municipality may withdraw from designation as a primary assessing area upon proper notice (36 M.R.S. § 303(1)).

The concept of primary assessing areas in Maine arose out of the need in the late 1960s to improve property tax administration by establishing jurisdictions of sufficient size and taxable resources to support efficient, competent and equitable valuations. Achievement of these goals was to be based, in part, upon the assumption that a reduction in the number of assessing jurisdictions would decrease the likelihood of major inequities among municipalities. Although the Legislature did not enact laws encompassing many of these goals, the implementation of statutory assessing standards (36 M.R.S. §§ 326 – 331) and the expansion of training and certification programs (36 M.R.S. § 310 – 314) has brought about a realization of many of these earlier concepts. These enactments have also fostered the growth of educational programs sponsored by regional and statewide associations of assessing officers.

A “primary assessing district” is defined as a group of municipalities that combine valuation resources to support property tax administration by a properly trained staff of assessment professionals. There are no primary assessing districts in the State at the present time.

A “primary assessing unit” is a single municipality that has been designated as a primary assessing area. At the present time there is only one such unit; Lewiston. The unorganized territory, however, comprised of unincorporated townships accounting for half of the state's land area, is also designated as a primary assessing unit (36 M.R.S. § 302).

A “municipal assessing unit” is any town that is not designated as a primary assessing area. (36 M.R.S. § 303(2)).

# CHAPTER 6

## REAL ESTATE TAXES

### General

All real property within the state is subject to taxation, unless exempted by law. Real estate is assessed as of April 1 regardless of when the actual assessment work is done. All questions as to ownership, description, and valuation must be considered as of April 1 (Finance Authority of Maine v. Caribou) (36 M.R.S. §§ 502 & 708).

For purposes of taxation, and subject to the exemptions provided by law, real estate includes all lands in the State and all buildings, mobile homes, and other things affixed to the land, together with the water power, shore privileges and rights, forests,

and mineral deposits belonging to the land. It also includes lines of electric light and power companies; and buildings and mobile homes whether or not on leased land or on the land of others. Finally, it includes non-exempt interests by contract or otherwise in real estate exempt from taxation (36 M.R.S. § 551).

While water-power is defined as real estate for the purpose of taxation, water-power, as such, is not taxable. The land on which a mill privilege exists is taxable at its worth as land enhanced by the value of its capacity for water power development. If the privilege is undeveloped or unused, the capacity of the land for power development is nevertheless an element of value to be considered in its tax valuation. In other words, while a mill privilege cannot be assessed apart from land, the value of a mill privilege is properly included as an element of value in the land where the privilege exists (Shawmut Manufacturing Co. v. Benton).

### Where and to Whom Real Estate is Taxable

**Where real estate is taxable?** Real estate must be assessed in the municipality where it is located (36 M.R.S. § 553). Assessors have no authority to assess taxes against any real estate lying outside the boundaries of the municipality in which they hold office, and assessors are personally liable for any assessment that they are not by law required to assess.

**To whom is real estate taxable?** Real estate may be assessed either to the owner or the person in possession thereof on April 1 (36 M.R.S. § 553). When real estate is assessed to the person in possession rather than to the owner, the person assessed should be identified in the assessment records as “tenant in possession” or “person in possession.” An assessment to “persons unknown” does not improve the description.

A tax upon real estate may be legal, even if the person to whom it is assessed may have been only a tenant in possession (Hobbs v. Clements). An assessment can also be made against a tenant in possession of part of an entire parcel (Murray v. Ryder). The court has ruled, for example, that where a person built a cottage on a lot of land under verbal permission of the landowner, that person became a tenant in possession of both the cottage and land were rightfully assessed as real estate to him as tenant in possession (Foxcroft v. Straw).

The following are some special cases with which assessors may come in contact:

**Bank Real Estate.** Real estate (including vaults and safe deposit boxes) owned by a bank incorporated by the State of Maine, for the purpose of doing a loan, trust or banking business, shall be taxed in the place where the property is situated and assessed to the bank. This would not apply to building and loan associations. 36 M.R.S. § 560.

**Bankruptcy.** Real estate in bankruptcy should be assessed in the name of the owner and the trustee. In this case, a current tax bill may be sent, but no late notices.

**Bond for deed.** Also known as a land installment contract, this is a contract only and not a transfer of actual title. Property must continue to be assessed to the owner and upon a later deed, transfer of ownership occurs.

**Buildings on leased land.** The Maine Supreme Court has specifically recognized the separation of interests in real property (*Portland Terminal Co. v. Hinds*). When a building is located on leased land, or on land not owned by the owner of the building, the building should be assessed to the owner of the building and the land to the owner of the land. In no case should a building on leased land be assessed to the owner of the land if he is neither owner nor occupant of the building.

The separation of various interests in property and their taxation to respective owners is a critical issue in certain exemption determinations that hinge on the use of property rather than ownership of property.

**Condominiums and time-share estates.** (33 M.R.S. chapters 10-A & 31), the Maine Condominium Act, defines a condominium to be real estate consisting of both separate and common ownership interests. Each unit of real estate is a separate parcel of real estate and must be separately assessed to the owner. The assessment should include the proportionate share of the real estate held in common, including the underlying fee interest in the whole property. The common interests may not be separately assessed unless a party has undivided development or reserved rights in the commonly held property.

A time-share estate is an interest in a unit of real estate consisting of the exclusive right to use, possess, or occupy the unit for a fixed period of time each year, for a certain number of years or indefinitely. Each time-share estate in the unit is a separate estate in real property and must be separately assessed including all interests held in common in the real estate.

**Deceased person's real estate.** The undivided real estate of a deceased person, or decedent, may be assessed to the beneficiaries generally without designating any of them by name. Undivided real estate is property held by two or more people with no specific percentage assignment of interest, such as joint tenants (see "Jointly owned property" below). Without knowledge of the specific interest held by each person, the assessor is unable to separate property value or liability. If the assessor is notified that there is a personal representative for an estate, property not transferred to beneficiaries should be assessed to the personal representative in his or her fiduciary capacity. Property tax should not be assessed to "the estate of" the decedent.

If the personal representative notifies the assessor that he or she has no funds of the estate to pay such taxes and gives them the names of the beneficiaries and the proportions of their interests in the estate to the best of his or her knowledge, the real estate shall no longer be assessed to the personal representative (36 M.R.S. § 559). Assessment to beneficiaries in general or to the personal representative of an estate applies to undivided real estate. It would not apply to parcels of real estate specifically given by will to certain individuals (*Bucksport v. Swazey*).

If property is identified in a will, it must be assessed to the "devisees of" the decedent, to each beneficiary, or to the personal representative. If property is not described in a will, that

property must be assessed to the “heirs of” the decedent, to each beneficiary, or to the personal representative (Gray v. Hutchins).

An assessment to the “devisees of” or the “heirs of” makes it extremely difficult to enforce a delinquent tax, since to foreclose the tax collector must identify each heir or devisee. A good rule to follow is to continue to assess the personal representative until notified of new ownership.

The important points about assessment of real estate of a decedent:

- 1) Never assess real estate to “the estate of” the decedent. Such an assessment is void.
- 2) Avoid assessing to “the heirs of” or “the devisees of” the decedent, if possible.

If a property owner dies after April 1, but prior to commitment, the assessment should still be in the name of the owner as of April 1 (Egery v. Woodard).

**Former owner.** The law provides that, barring notice of transfer, it is lawful for an assessor to continue to assess real estate to the person to whom it was last assessed, even if the ownership or occupancy of that property has changed (36 M.R.S. § 557). The Property Tax Division suggests that assessors try to avoid this provision. They should make an effort to keep the assessment records accurate and up-to-date. Transfers of real estate can be checked easily by keeping matching files of deeds (registries of deeds provide these on a monthly basis) and the Real Estate Transfer Tax Declaration forms, which the Property Tax Division sends on a monthly basis. As an example of the risks involved in continuing to assess to the former owner of real estate, if assessment is continued, and the former owner dies prior to April 1, the assessment is invalid.

**Forest lands not classified under the Tree Growth Tax Law.** Any single tract of forest land greater than 25 acres under one ownership which is devoted to growing trees for commercial use must be assessed with consideration given to 36 M.R.S. §§ 563 & 564. Assessments must consider location and proximity to public facilities and the productivity of the land. If the owner can prove that an assessment creates incentive to abandon the land, strip the land, or operate contrary to the public policy of sustained yield harvesting, then the assessment will be held to be in excess of just value. The owner need only show that the tax burden is such that he is unable by efficient operation on a sustained yield basis to achieve an adequate annual net return commensurate with the risks involved. This rule appears to have been made ineffective by the passage in 1972 of 36 M.R.S. § 577 as part of the Tree Growth Tax Law under §§ 571 – 584-A.

**Jointly owned property.** A tenant in common or joint tenant may be considered sole owner for the purpose of taxation. 36 M.R.S. § 555.

“Tenants in common” means each owner has a specific interest that can be sold or transferred independently.

“Joint tenants” means all owners own the property together. This ownership structure allows a property to automatically transfer to one of the parties upon the death of the other. It is a good idea to note this in the assessment so that you can change the ownership when necessary. This property structure is referred to as undivided real estate (see “Deceased person’s real estate above”).

**Life tenant.** A person who acquires or retains a life estate in real property is considered the owner of that property for the purpose of taxation, and the property should be assessed to the life tenant (Kelley v. Jones).

**Minors.** Real estate owned by minors should be assessed to the minor unless the assessor has been made aware of a court-appointed guardian.

**Manufactured homes.** Manufactured homes as defined in 10 M.R.S. § 9002(7)(A) or (C) except stock-in-trade or inventory, are taxable as real estate, but camper trailers are generally taxed as personal property. A stock-in-trade manufactured home is defined as one that is: (1) presently unoccupied; (2) not previously occupied at its present location; (3) not connected to water or sewer; and (4) is owned and offered for sale by a person or organization licensed for the retail sale of manufactured homes. 36 M.R.S. § 655(1)(B).

**Mortgaged property.** In cases of mortgaged real estate, the mortgagor (borrower), for taxation purposes, is deemed to be the owner, until the mortgagee (bank or other lending institution) takes possession, after which the mortgagee is deemed to be the owner. 36 M.R.S. § 554.

**Multiple owners.** When partial interests are transferred, one can assess the major owner, et al for the entire property or one can assess the individual ownership interest at the request of the owners.

“Et al” is Latin for *and others* without specification.

**Railroad buildings.** The buildings of every railroad corporation or association, whether within or outside the located right-of-way, and any of the right-of-way that has been abandoned, are subject to taxation in the places in which they are located, as other property is taxed therein. 36 M.R.S. § 561. Active railroad rights-of-way are exempt.

**Resident and nonresident owners.** Historically, assessment records were separated into resident and nonresident sections, a practice which facilitated assessment of personal property and tax enforcement proceedings. This separation of accounts also sometimes resulted in unequal assessment. Changes in the statutes have rendered this practice unnecessary, and few municipalities continue to separate their accounts in this way.

**Standing wood, bark, and timber.** Whenever the owner of real estate notifies the assessor that any part of the wood, bark, and timber standing on the property has been sold by contract, in writing, and exhibits proper evidence, the assessor will assess such wood, bark, and timber to the purchaser and the land to the landowner. 36 M.R.S. § 562. The Tree Growth Tax Law, under § 578(3) requires 10% allocation of value to the land and 90% value to the timber in cases where one person owns the land and another person owns the rights to the timber on that land. For land not enrolled in the Tree Growth Tax Law program, a municipality must determine the appropriate value division between the land and the timber.

**Time-share estates.** (33 M.R.S. § 593) Time-share interests are often for one week, two weeks, and as much as quarter-year shares. Because several people will possess the unit during each year, the units are furnished and typically have membership rights vacation exchange organizations, and other costs and memberships that, although part of purchase price, are not part of the real property interest being transferred. Assessors must carefully assess these properties so that personal property, membership services and costs associated with those services are not included in the valuation of the real property.

**Trust property.** Property that is held in a trust is taxable to the trustee in the name of the trust. Assessors must be careful to have both the name of the trust and the name and address of the trustee or trustees for proper assessment of the tax. If there is more than one trustee, an assessment to any one of them is proper.

**Unknown owner.** In a case where an assessor, after reasonable diligence, cannot determine the owner of a property for at least the preceding 20 years, the real property may be assessed to “unknown.” Notice of the assessment and a description of the property is required to be published for three consecutive weeks (once a week) together with a statement that the assessment is a result of the failure to locate the owner of record. A copy of this notice must also be sent to abutting landowners. If the owner remains unknown, the tax collector and treasurer must use the same procedures for notices required for tax lien certificates to perfect collection of the tax (36 M.R.S. § 557-A).

## **Description of Real Estate**

A municipality is, by law, given a claim against each parcel of taxable real estate to secure the payment of the tax assessed against that real estate. This claim is called a lien, and it comes ahead of any other claim against the property except a claim from the federal government (36 M.R.S. § 552). This claim may be enforced in one of three ways provided by law: (1) by an action of debt with specific attachment (36 M.R.S. § 941); (2) by a tax auction sale, sometimes called the tax deed method (36 M.R.S. §§ 1071-1084); or (3) by recording a lien certificate in the registry of deeds sometimes called tax lien mortgage method (36 M.R.S. § 942). This lien is extremely valuable to the municipality; without it, it would be difficult to impossible to secure many real estate taxes.

To obtain the benefit of a lien, real estate taxes must be carefully and correctly assessed.

A careful and correct assessment requires that: (1) each separate parcel of real estate be separately assessed (36 M.R.S. § 708; Nason v. Ricker); and (2) each parcel of real estate be adequately described in the valuation book (36 M.R.S. § 552). An inadequate description will not invalidate the tax, but to protect the lien process, the assessor must impose a supplemental assessment to correct the description error (Davis v. Ellsworth; Johnson v. Dedham).

An action may be brought to recover a tax on real estate, where it is assessed as a fixed number of acres in a town, without other specific identity or description, although such a description is not sufficient to sustain a forfeiture of the property (Cressey v. Parks).

A lien to secure payment of legally assessed property taxes is created on the date the tax is assessed (36 M.R.S. § 552).

**Separate assessments for different parcels.** Assessors are required to separately determine the value of land and buildings for each parcel of real estate (36 M.R.S. § 708). However, since the property tax statute does not define parcel, except in the special case of current use valuation permitted under the Tree Growth Tax Law, a parcel is deemed to include a unit of real estate, notwithstanding that it is divided by a road, way, railroad or pipeline, or by a municipal or county line (36 M.R.S. § 574(B)). Because of this lack of definition, the court has addressed the issue of separate tax assessment of parcels in a variety of contexts.

A review of the more significant decisions below will provide insight into the court's interpretation of the statute. The legal principle underlying the necessity for the statute is clear. If separate parcels belonging to different people could be assessed together, then an owner could not determine his or her proper tax liability and could only protect his or her property interests by paying the entire tax.

The court has stated that: “. . . much greater particularity and precision are always required when a forfeiture is sought to be enforced, than when a simple recovery is asked for.” (Rockland v.

Ulmer). The court has determined that more care must be taken to follow the law to the letter if taking property from the owner is at stake than in a simple dispute over the correct amount of tax.

For example, a taxpayer reported to the assessor that he owned separate lots of land which were neither adjoining, nor in any way connected with one another. Instead of making and listing separate assessments for each lot, the assessor appraised the three lots as a unit. The court rules, over the complaint of the landowner, that although this group appraisal might prevent a tax lien attaching to any of these lots, it did not increase the valuation or the tax burden of the landowner and therefore the single assessment against three separate lots was determined to be legal (Rockland v. Ulmer). Although the decision supported the practice of combining assessments in this case, it highlighted the enforcement limitations of such a. This interpretation was later reinforced when the court ruled that it is not necessary in an action to recover a tax that an assessment contain a particular description of the property assessed or that separate valuations should be made when there are several parcels, as in a case where forfeiture might ensue. (Georgetown v. Reid).

In another case, assessors had assessed the tax on certain woodland as a single parcel. The land was described as two lots in the deed, but formed a single tract of land with no marked line of division. A lien certificate was subsequently issued which described the land as one parcel and described the property by metes and bounds differently from the deed description for the two lots. The landowner claimed that this violated the separate parcel assessment required by 36 M.R.S. § 708. The court declined to adopt a rule requiring assessors to show separately described lots as separate parcels in the assessment list. Such a rule, the court stated, could conflict with the assessor's constitutional duty to assess property equally, according to its just value. There was no distinction in use between the two contiguous lots and the assessors had not acted contrary to law in assessing the land as one parcel of unimproved woodland (Fickett v. Hohlfield).

Finally, and perhaps most insightful for parcel definition purposes, is the following decision. An unimproved tract of land was acquired through a deed describing the property by metes and bounds as a single tract. The lien certificate described the land as lots 14-35 and 14-36A as shown on the city's tax maps. But, the assessors had assessed a tax on the land as a single tract of land even though it was divided into two pieces by a public road and identified as two parcels on the tax map. The landowner argued that this violated the separate assessment statute for each parcel of real estate. The only evidence presented by the landowner was the presence of the public road and the tax map descriptions. The court found this insufficient to overcome the facts that the whole tract was of the same character and usage and the landowner had purchased it as a unit. The landowner had not met his burden of proving that the factual circumstances of the land were such as to make its assessment as a single parcel unlawful.

The court specifically rejected the idea that a single parcel may never, for tax assessment purposes, be divided by a public road. The mere presence of a road did not rebut the statutory presumption of regularity in assessing the land as a single parcel (Augusta v. Allen). If a contiguous tract of land, but for a road, is of the same ownership, character, and usage, a single assessment of the entire tract is valid despite the intervening road.

Although the court had previously ruled that a road may separate two separately assessed parcels under the same ownership, it did not suggest that land divided by a public road may never, as a matter of law, be assessed as a single parcel (McCarty v. Greenlawn Cemetery Assn.).

The rationale behind the statute requiring separate assessments for tax purposes does not prohibit assessors from ever treating land divided by a road, stone walls, streams, or other natural or man-made landmarks as a single parcel. The test for a single parcel determination is one of reason, subject to the presumption of regularity, but the land must constitute a functional unit. Although the existence of a public road dividing a tract is one factor to be considered in reviewing the

reasonableness of an assessor's judgment, that factor without more does not necessarily require the tract to be treated as two parcels for tax assessment purposes (Augusta v. Allen).

)]Note: For subdivision purposes, a “tract or parcel of land” means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road (30-A M.R.S. § 4401(6)).

The courts have recognized that assessors may properly exercise a reasonable amount of discretion in determining single parcels. If assessors have acted reasonably to place separate assessments on each parcel of real estate, the assessment will be upheld. The reasonableness of the assessor's determination depends on the circumstances in each case and no single factor is always decisive. Some factors which may be considered are: 1) whether the property is of the same character and usage; 2) the manner in which the property has been conveyed; and 3) the presence of roads or other natural obstructions which may split the property.

In the interests of perfecting collection of taxes through the lien procedure, and allowing delinquent taxpayers to redeem real estate when the tax burden cannot be met, assessors should assess parcels in the smallest reasonable units.

A separate parcel of real estate is a parcel contained within one set of bounds. For example, a farm may be made up of a number of parcels acquired at different times and from different people; but as long as the farm is owned and operated by one person, and is included within one set of bounds, it may be assessed as one parcel.

Likewise, a tract of land may be divided into a number of house lots, but as long as all are owned by the same person, and are included within one set of bounds, the tract may be assessed as one parcel. It is recognized that a subdivision should be assessed individually.

If separately owned, however, two lots must be separately assessed to preserve tax foreclosure procedures. Although the Legislature has refrained from creating a statutory definition for a parcel, legislation passed in 1993 does allow that parcels divided by a road, powerline or right-of-way may be valued as one parcel when: each of the parcels contains five or more acres, the owner gives written consent that the parcels may be valued as one, and the owner certifies the parcels are not held for sale and are not subdivision lots. (36 M.R.S. § 701-A).

The bureau recommends that, whenever reasonable, land divided by a road or a natural obstruction such as a river, be assessed as separate parcels.

**Complete and accurate description.** Each statutory method by which a lien for taxes is enforced requires that the valuation book include a description of the real estate sufficiently accurate to identify it (36 M.R.S. § 552) (Fickett v. Hohlfeld). The description need not be as detailed as might be found in a deed, but it must be sufficient to enable an unrelated third party to identify the property with reasonable certainty, and it must be correct.

Three types of description are commonly used. The first is a description of the property by bounds; the second, by reference to a recorded deed; and the third, by reference to a plan or tax map.

1. Description by Bounds. The description by bounds identifies the property by describing the adjoining property on each side of the parcel, thus:

*“Land bounded on the north by land now or formerly of John Jones; east by Wilson Pond; south by land now or formerly of William Smith, and by land now or formerly of Ralph Adams; west by the North Road, so called.”*

2. Description by reference to registry record. The description by reference to a recorded deed refers to the book and page number, and the name of the registry, where the recorded deed will be found. Although this kind of description may be excellent, care must be taken to inspect the recorded deed referred to. It must include the entire description of the present property and include descriptions of any out deeds or additions thereto, complete with their individual deed references. If this is not complete, the description may be inadequate. (Perry v. Lincolnville).

3. Description by reference to a plan or tax map. Other descriptions are proper such as a reference to a recorded survey map, plan, or to a tax map. Under certain circumstances, even though a tax map is not recorded in the registry of deeds, it can still be used, provided that there is notation in the valuation book as to where this map is available and provided further that the parcel described can be identified as that of a specific tax year. The tax map can describe the parcel by sheet, block and lot or some other definite scheme such that there is no question as to which parcel is involved. It is recommended that, when using a tax map identification, one of the other methods also be used.

Although land must be valued separately from buildings, reference to buildings is not demanded by the lien certificate statute, since buildings pass with the land without any detailed mention or description (Gray v. Hutchins).

## Current Use Assessments

**Generally.** The Maine Constitution authorizes the Legislature to provide for current use valuations on farms and agricultural lands, timberlands, open space lands that are used for recreation or the enjoyment of scenic natural beauty, lands used for game management or wildlife sanctuaries, and waterfront land. It also requires imposition of a minimum penalty of five years back taxes which would otherwise have been assessed at the property's highest and best use, less all taxes actually paid over the period, plus interest, when land is removed from the above special uses. The penalty assessment base cannot include the value of minerals if there is a state excise tax on those minerals (Article IX, section 8, subsection 2).

**Tree Growth Tax Law.** In 1971 the Tree Growth Tax Law was enacted to implement a current use assessment policy on forest land based upon its potential for annual wood production. (36 M.R.S. § 571 - 584-A).

“Forest land”, for the purposes of the Tree Growth tax law, is land used primarily for the growth of trees to be harvested for commercial use, but does not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing forest products for commercial use even though these areas may exist within forest lands.

Land which would otherwise qualify as forest land cannot be excluded merely because of: multiple use for recreation; statutory or governmental restrictions which limit commercial harvesting or require a primary use of the land other than commercial harvesting; deed restrictions, restrictive covenants or organizational charters which prevent commercial harvesting and which were in effect prior to January 1, 1982; past or present use for mineral exploration. (36 M.R.S. § 573 (3))

Owners of parcels containing at least ten forested acres of land may apply to the assessor in the town where the parcel is situated, on a form prescribed by the State Tax Assessor, to classify forest land under this current use assessment law.

A parcel is a unit of real estate that may be divided by a road, way, railroad or pipeline, or by a municipal or county line (36 M.R.S. § 574-B). In the case of common ownership, unanimous consent of all owners is required to participate in the program. The state is an exception.

Landowners must declare their eligibility by presenting evidence that they are complying with the following requirements:

1. The parcel contains at least ten forested acres.
2. The landowner must comply with the forest management and harvest plan developed under 36 M.R.S. § 574-B(1), and must submit, every ten years to the municipal assessor in a municipality or the State Tax Assessor for parcels in the unorganized territory, a statement from a licensed professional forester that the landowner is managing the parcel according to schedules in the forest management and harvest plan (36 M.R.S. § 574-B).
3. When land taxed under the Tree Growth Tax Law is transferred to a new owner, within one year of the date of transfer, the new landowner must file with the municipal assessor or the State Tax Assessor for land in the unorganized territory one of the following:
  - A. A sworn statement indicating that a new forest management and harvest plan has been prepared; or
  - B. A statement from a licensed professional forester that the land is being managed in accordance with the plan prepared for the previous landowner

The new landowner may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor. A person owning timber rights on land taxed under this subchapter may not harvest or authorize the harvest of forest products for commercial use until a statement described in paragraph A or B is filed with the assessor.

4. Attestation. Beginning August 1, 2012, when a landowner is required to provide to the assessor evidence that a forest management and harvest plan has been prepared for the parcel or updated pursuant to subsection 1, or when a landowner is required to provide evidence of compliance pursuant to subsection 2, the landowner must provide an attestation that the landowner's primary use for the forest land classified pursuant to this subchapter is to grow trees to be harvested for commercial use or that the forest land is land described in section 573, subsection 3, paragraphs A, B, C or E. The existence of multiple uses on an enrolled parcel does not render it inapplicable for tax treatment under this subchapter, as long as the enrolled parcel remains primarily used for the growth of trees to be harvested for commercial use. (36 M.R.S. § 574-B)

Parcels eligible by virtue of 36 M.R.S. §§ 573(3)(B) or (C) are exempt from this requirement.

Any parcel of more than 100 acres, leased for a recreational use for a value that exceeds the value of the land in the tree growth program and the value of which can be extracted on a sustained basis per acre, is ineligible for classification (36 M.R.S. § 574-A).

**Determining compliance with forest management and harvest plan** Upon request of a municipal assessor or the State Tax Assessor and in accordance with § 579, the Director of the

Division of Forestry within the Department of Agriculture, Conservation and Forestry may provide assistance in evaluating a forest management and harvest plan to determine whether the plan meets the definition of a forest management and harvest plan in § 573(3-A). (36 M.R.S. § 575-A).

**Reduction of parcels with structures; shoreland areas** If a parcel of land for which an owner seeks classification under the tree growth program on or after August 1, 2012 contains a structure for which a minimum lot size is required under state law or by municipal ordinance, the owner in the schedule under § 579 shall apply the following reduction to the land to be valued under this subchapter.

**1. Structures.** For each structure located on a parcel for which a minimum lot size is required under state law or by municipal ordinance, the owner of the property shall exclude from the forest land subject to valuation under the tree growth program the area of land in the parcel containing the structure or structures, which may not be less than a half-acre.

**2. Shoreland areas.** For each residential structure located within a shoreland area, as identified in 38 M.R.S. § 435, the owner in the schedule under § 579 shall exclude from the forest land subject to valuation under subchapter ?? the area of land in the parcel containing the structure or structures, which may not be less than a half acre, and the excluded parcel must include 100 feet of shoreland frontage or the minimum shoreland frontage required by the applicable minimum requirements of the zoning ordinance for the area in which the land is located, whichever is larger. If the parcel has less than 100 feet of shoreland frontage, the entire shoreland frontage must be excluded. This subsection does not apply to a structure that is used principally for commercial activities related to forest products that have commercial value as long as any residential use of the structure is nonrecreational, temporary in duration and purely incidental to the commercial use. (36 M.R.S. § 574-A).

The application must be filed on or before April 1 of the year for which classification is requested. Annual filings thereafter are not required; however, the assessor may request the filing of a new application at any time giving 120 days written notice. Landowners must report any changes in land use of classified forest land (36 M.R.S. § 579).

The State Tax Assessor determines the 100% valuation per acre for each forest type (softwood, mixed wood and hardwood) by region each year. These values are certified to municipal assessors each year. The municipal assessors must use these values, adjusted by the municipalities' certified assessment ratio. Areas other than forest land within any classified parcel are to be valued on the basis of fair market value in the community where the land is.

Landowners may at any time request withdrawals of any parcel or portion thereof by certifying to the assessor that the land is no longer to be classified under the Tree Growth Tax Law. In the case of a portion of a parcel, a plan showing the withdrawn area must be filed. If forest land is no longer used primarily for the growth of trees to be harvested for commercial use, it should be reported by the landowner to the assessor. If the landowner fails to report such change and the assessor determines that the parcel no longer qualifies, the assessor will withdraw the land and assess penalties.

Whenever withdrawal of land occurs, except through the exercise or threatened exercise of eminent domain, a sale to the municipality, an instrumentality of the state or to the federal government, a penalty applies to the real estate withdrawn. The penalty is an amount equal to 30% of the difference between the full Tree Growth value of the classified land on the assessment date immediately preceding withdrawal and the just value of the property on the date of withdrawal. If the land was classified for more than ten years, the following schedule provides the penalty percentages that must be applied (36 M.R.S. § 581):

10 years or less	30%	16 years	24%
11 years	29%	17 years	23%
12 years	28%	18 years	22%
13 years	27%	19 years	21%
14 years	26%	20 years or more	20%
15 years	25%		

Just value at the time of withdrawal is governed by the assessed value of comparable property that is not valued on a current use basis in the municipality, adjusted by the certified assessment ratio.

It is the obligation of the owner of classified land to report to the assessor any change of use or change of forest type. If a landowner fails to report the change of use or change of forest type, the assessor will charge a penalty equal to the taxes that should have been paid plus the withdrawal penalty under § 581 plus an additional penalty equal to 25% of the withdrawal penalty. The municipal assessor may waive the 25% penalty for good cause. 36 M.R.S. § 579. Good cause is usually defined as a justifiable reason and it is up to the assessor to determine the criteria for good cause. In any event, the determination of good cause must be applied fairly and equitably to all residents in similar situations.

When a portion of classified forest land, consisting of at least ten forested acres, is sold it continues under classified status until and unless it is withdrawn. Within one year of the date of transfer, a purchaser must prepare a new forest management and harvesting plan or, if applicable, adopt by certification the written forest management and harvesting plan as prepared for the prior owner. If a parcel resulting from a sale is less than ten forested acres, then it must be withdrawn from classification as a result of the sale. The withdrawal penalty is assessed against the owner (purchaser) of the resulting parcel of less than ten forested acres (36 M.R.S. § 581-A).

Municipal assessors must annually report the following information to the Bureau of Forestry on prescribed forms by November 1 or 30 days following the commitment date, whichever is sooner:

1. The names and addresses of classified landowners.
2. The total acreage, by forest type, taxed under the Tree Growth Tax Law.
3. The year each parcel was accepted for classified status. (36 M.R.S. § 581-E).

**Farm and Open Space.** The Farm and Open Space Tax Law, enacted in 1971, (36 M.R.S. §§ 1101-1121) provides for the valuation of land classified as farmland or open space land based upon its current use as farmland or open space, rather than its potential fair market value for more intensive uses other than agriculture or open space.

Farmland is any tract of land, including woodland and wasteland, of at least five contiguous acres on which farming, agricultural or horticultural activities have produced a gross income of at least \$2,000 per year in one of the two, or three of the five calendar years preceding the date of application for classification. Gross income may include the value of produce for farm household consumption (36 M.R.S. § 1102(4)). Land on which poultry houses sit does not qualify for current use valuation. However, the income from poultry operations on a farm unit may be used to qualify otherwise eligible land on that farm for current use valuation (Opinion of the Attorney General, April 10, 1978).

The owner of land in the Farmland program must report to the assessor at least every fifth year by April 1, a determination of the gross income realized for each of the previous five years.

An owner of farmland that meets all requirements except the gross income requirements may apply for a two-year provisional classification as farmland. If, at the end of the two-year period, the land still does not qualify, the penalty is equal to the taxes which would have been assessed had the property been assessed at its fair market value on April 1 for the two preceding tax years less the taxes paid during those years plus interest at the legal rate on those amounts which would have been payable. 36 M.R.S. § 1109(2).

Open space land is any area with no specific size requirement, including state wildlife and management areas, sanctuaries, and preserves designated as such in Title 12, the preservation or restriction of the use of which would provide a public benefit by: conserving scenic resources; enhancing public recreation opportunities; promoting game management; or preserving wildlife and preserved woodlands. 36 M.R.S. § 1102 (6). In making the determination that the restriction or preservation of land under open space classification provides a public benefit, the assessor shall consider all facts and circumstances pertinent to the land and its vicinity. Factors appropriate for one application may be irrelevant in determining the public benefit of another application. Specific factors to consider when determining qualification under the Open Space program are enumerated in Bulletin No. 18 (36 M.R.S. § 1109(3)). Any property established as a wildlife sanctuary by the Legislature is entitled to current use classification as a matter of law and the landowner need only make application to the assessor. Simultaneous beneficial or even profitable uses of open space property that are consistent with open space status (for example, a public water supply) are not fatal with respect to current use eligibility (Augusta Water District v. Readfield).

If a parcel of land for which the owner is seeking classification as open space contains structures or other improvements that are inconsistent with the preservation of the land as open space, the owner, in the application for the program, must exclude from open space classification a parcel of land that includes those structures or other improvements. The excluded parcel must: 1) be no smaller than the state minimum lot size as prescribed in 12 M.R.S. § 4807-A; 2) be no smaller than the minimum lot size for the zoning ordinances pertaining to the area in which the land is located; or 3) contain the minimum shoreland frontage required by the minimum guidelines established pursuant to 38 M.R.S. §§ 435 – 449 or the applicable local zoning ordinance, whichever is largest.

Owners of farm and open space land may file an application prescribed by the State Tax Assessor by April 1 of the year in which classification is first requested. Annual filing is not required; however, the assessor may request the filing of a new application at any time. Assessors must notify applicants of classification status by June 1 of that year. Landowners must notify the assessor of any change in farm or open space land classification. Assessors may reclassify land for good cause. Good cause is usually defined as a justifiable reason and it is up to the assessor to determine the criteria for good cause. In any event, the determination of good cause must be applied fairly and equitably to all residents in similar situations.

The assessor for each taxing jurisdiction must establish the 100% valuations per acre based on the current use value for classified lands. Farmland values are based on the following considerations: farmland rentals, farmer-to-farmer sales, soil types and quality, commodity values and topography. The value of open space land is the sale price that particular open space parcel would command in the marketplace if it were required to remain in the particular category or categories of open space land for which it qualifies pursuant to 36 M.R.S. § 1102(6). An alternative valuation method recognizing varying percentage reductions for different categories of

encumbrances of open space land (36 M.R.S. § 1106-A(2)) is also available to assessors and is more fully described in Property Tax Bulletin No. 21.

The values cannot reflect development or market value purposes other than agriculture, horticultural, or open space use and cannot reflect value attributable to road frontage or shore frontage. Guidelines and suggested values for cropland, orchard land, pasture land, and horticultural land are available from the Property Tax Division and the Department of Agriculture, Conservation and Forestry (36 M.R.S. § 1119). The assessed value is arrived at by the assessor adjusting the 100% valuation per acre for farmland by the percentage of just value currently being applied to property within the municipality (36 M.R.S. § 1108(1)).

Areas in a parcel other than qualifying classified lands are valued on the basis of fair market value. Forest land within a farmland classified parcel is valued using the 100% valuations per acre established according to the Tree Growth Tax Law. Forest land within an open space parcel is valued using an open space value.

**Withdrawal and penalty.** If classified farmland or open space land no longer meets the requirement, it may be withdrawn by the assessor or at the request of the landowner. Penalties are imposed for change of use or withdrawal of classified land.

The penalty for farmland withdrawal equals the taxes which would have been assessed for the past five years, less taxes actually paid, plus interest for those five years. This is the constitutionally required minimum penalty. An owner of farmland that has been classified for five full years or more may pay any penalty owed in up to five annual installments with interest at the rate set by the municipality beginning 60 days after the date of the supplemental assessment.

Property transferred from farmland to open space or from open space to farmland generates no penalty. Property transferred from open space to tree growth or from tree growth to open space generates no penalty. Property transferred from tree growth to farmland generates no penalty. Property, however, transferred from farmland to tree growth will generate the farmland withdrawal penalty. 36 M.R.S. § 1112.

The penalty for land withdrawn from the Open Space program is the same as that imposed on Tree Growth program withdrawal in 36 M.R.S. § 581.

In no event may a withdrawal penalty be less than the minimum penalty required by the constitution. 36 M.R.S. § 1112.

The sale of a portion of a parcel of classified farmland or open space land does not affect its eligibility for continued classification unless the land does not meet the minimum acreage requirement. 36 M.R.S. § 1115.

## **Limitations on Land Use**

The use of land may be legally limited in many ways. These limitations may be of importance to assessors in that they can either positively or adversely affect value. Governments may impose limitations through zoning, environmental protection, housing codes, subdivision regulations, etc. Property rights may also be limited by restrictive covenants in deeds, liens, easements, etc. These limitations are called encumbrances and are interests in land that must be considered when making an assessment. With the exception of easements, all encumbrances affect only the property thus restricted. In the case of easements, two or more properties may be directly affected by the terms of the conveyance.

Deed restrictions, easements and other limitations unique to a special class of property rather than a class of property are not possessory interests in land, but merely privileges or restrictions that are attached to the title to land.

**Zoning.** Zoning regulations are rules adopted by communities to determine the size of lots and the type and use of buildings in a specific area of the community. The effect of zoning is to keep separate areas of residential, commercial, and industrial uses in a community. Zoning regulations can assist the assessor in determining areas with similar building use for developing cost manuals and conducting sales ratio studies. Zoning regulations may have a substantial effect on the value of properties within a zone.

### **Environmental Protections, Housing Codes, Subdivision Regulations.**

**Deed Restrictions.** These restrictive covenants are placed in deeds often by developers to maintain consistent uses in a subdivision. Common restrictions concern the size of building to be built, the minimum setback of the building from the street, and, where there is no zoning, the use of the property. These restrictions tend to enhance the values of properties affected because they are normally used to set minimum standards for development.

**Liens.** These are either voluntary or involuntary restrictions or claims against a property usually to secure payment of a debt. Most liens whether created in mortgages or securing other indebtedness, normally have little or no effect on the values of the properties restricted.

**Easements.** An easement is the right of one owner of land to make lawful and beneficial use of the land of another, created by an express or implied agreement. Such use must not be inconsistent with any other uses that are already being made of the land, or inconsistent with zoning, subdivision or other municipal regulation in force at the time of the creation of the easement. Easements must include a dominant estate, the land that benefits from the terms of the easement and a servient estate, the land that is subject to restriction imposed by the easement.

In developing just value of estates, assessors must consider the effect upon value of an enforceable restriction of the servient estate or benefit to the dominant estate which results from the creation of an easement. The just value of land is properly considered within the context of legally permissible uses of the land only. 36 M.R.S. § 701-A.

An easement may be created by a separate conveyance, which may be recorded in a registry of deeds, as a clause in the conveyance of land either benefited or restricted by the easement. Easements may also be created by will, and in some cases inferred by circumstances or necessity. Written conveyances are not considered deeds subject to the real estate Transfer Tax (36 M.R.S. § 4641(2)) since such an instrument conveys no title to real property. Generally, easements can be terminated only by agreement of the parties, abandonment, merger of the dominant and servient estates, conveyance, or eminent domain. An affirmative easement allows the dominant estate certain access to the servient estate. A negative easement allows the dominant estate to restrict the servient estate's activities on its own land.

**Easement effect on value.** Easements in land are not ordinarily taxable separately. The tax situs of an easement is the place where the land lies to which it pertains or out of which it is created. The servient estate, on which a restriction has been imposed, must be assessed at its value subject to the restriction. The dominant estate, for which the benefit of the easement exists, should be assessed at its value including that benefit.

Each easement must be analyzed to determine how its terms affect the just value of each property affected by that easement. For instance, an easement that allows one property to have the right to use the driveway of another property may well have an impact on both properties' valuation. The assessor must judge the specific results of an easement and its effect on value. Easements can increase, decrease or have no effect on the value of affected properties.

Conservation easements may limit the highest and best use of property by restricting the size or number of structures that may be constructed on a parcel. This could decrease the just value of the property. Other easements that reduce the freedom of the landowner to enjoy full use of his or her property do not generally increase the just value of restricted land, but may increase the value of the estate creating the restriction. A forever wild conservation easement, which prohibits any structures or land improvements on otherwise developable land, may substantially reduce the just value of a property. Easements granted for road or utility rights-of-way may affect parcels differently. Availability of electrical power in most situations would increase the value of land benefiting from it. However a right of way for power lines to cross above a property would probably reduce the value.

**Telecommunications property.** Telecommunications personal property, used for the transmission of any interactive two-way communications including voice, image, data and information, subject to the state property tax under 36 M.R.S. § 457, is exempt from local property taxation. Exempt personal property includes any interest of a telecommunications business in poles.

The land, buildings, and microwave towers or similar towers owned by telecommunications service providers are taxable as real property where they are situated.

**Maine Municipal and Rural Electrification Cooperative Agency.** (35-A M.R.S. § 4135) All real and personal property by the Maine Municipal and Rural Electrification Corporation Agency is subject to taxes to the same extent as real and personal property owned by other electric utilities.



# CHAPTER 7

## PERSONAL PROPERTY TAXES

All personal property owned by inhabitants of the state, except that exempted by law, is subject to taxation. Personal property of nonresidents of the state, with certain exceptions, is also subject to taxation when it is located in the state on April 1. 36 M.R.S. § 602.

**Assessment date.** As is the case with real estate, personal property is taxed as of April 1. 36 M.R.S. §§ 502 and 708.

**Personal property defined.** Personal property for the purposes of taxation includes all tangible goods. 36 M.R.S. § 601. The excise tax on watercraft is imposed in lieu of all property taxes on watercraft. 36 M.R.S. §§ 1501 – 1506. Municipalities may not tax personal property permanently located and legally taxed outside of Maine.

Individually owned personal property with a just value of less than \$1,000 is exempt from tax, except property used for business and vehicles not registered for use on public roads under chapter 111.

### Where and to Whom Taxable

**The general rule.** All personal property in Maine or temporarily out-of-state is assessed where the owner resides on April 1 (36 M.R.S. §§ 502, 602, and 708). Personal property is taxed in this manner to prevent certain kinds of property, held and managed at a location other than the owner's residence, from escaping taxation. (Dead River Co. v. Houlton). This general rule is subject to a number of exceptions that are noted below.

**Exceptions to general rule.** Although all personal property is generally taxable by the owner's municipality of residence including, for example, such items as un-excised motor vehicles and farm tractors, there are exceptions in the statute including a specific exception for persons and corporations residing outside of the state. (36 M.R.S. § 603). These are the only exceptions to the general rule found in 36 M.R.S. § 602 (Lewiston v. Tri-State Rubbish).

1. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanical arts, shall be taxed in the place where so employed, except as otherwise provided for in this sub-section; provided that the owner, his or her servant, subcontractor or agent occupies any store, storehouse, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment. This includes both liquefied petroleum gas installations and industrial and medical gas installations, together with the tanks and other containers used in connection therewith. (36 M.R.S. § 603(1)).

2. Cargo Trailers are taxed in the place where primarily located. Primarily located has been deemed to mean the place where the cargo trailer is usually based and where it regularly returns for repairs, supplies and activities related to its use. (36 M.R.S. § 603(1-A))

3. The following items of personal property are taxed in the place where situated on April 1 (36 M.R.S. § 603(2-A))

a) Portable Mills (§ 603(2-A)(A))

- b) All store fixtures, office furniture, furnishings, fixtures and equipment (§ 603(2-A)(B))
- c) Professional Libraries, apparatus, implements and supplies (§ 603(2-A)(C))
- d) Coin-operated vending and amusement devices (§ 603(2-A)(D))
- e) All Camp Trailers as defined in section 1481 (§ 603(2-A)(E))
- f) Television and radio transmitting equipment (§ 603(2-A)(F))

4. **Personal property of nonresidents** is taxed in the place where it is employed either to the owner, to the person having the same in possession, or to the person owning or occupying any store, storehouse, shop, mill, wharf, landing, shipyard or other place therein where such property is located. A lien is created on such property for the payment of the tax that may be enforced by the tax collector to whom the tax is committed, by the sale of such property as provided. A lien is also created on such property in behalf of the person in possession so that he can recover from the owner what he owes. (36 M.R.S. § 603(3))

5. **Persons under Guardianship:** Personal property belonging to minors under guardianship is taxed to the guardian in the place where the guardian resides. The personal property of all other persons under guardianship is taxed to the guardian in the place where the ward resides. (36 M.R.S. § 603(6))

6. **Persons Unknown:** Personal property owned by persons unknown is taxed to the person having the same in possession. A lien is created on said property on behalf of the person in possession, which he may enforce for the repayment of all sums by him paid in discharge of the tax.

7. **Certain Corporations:** The personal property of manufacturing, mining, smelting, agricultural and stock raising corporations and corporations organized for the purpose of buying, selling and leasing real estate shall be taxed to the corporation or to the person having possession of its property in the place where the personal property is kept, except as provided in subsections specified in 36 M.R.S. § 603(9).

8. **Deceased persons:** The personal property of deceased persons should be assessed to the personal representative of the deceased (or to the estate of the decedent if a personal representative has not been appointed) in the place where the deceased last resided, if in the state, until the personal representative gives notice to the assessor that the property has been distributed. If the deceased at the time of his or her death did not reside in the State, personal property shall be assessed to the personal representative in the place where the property is situated on April 1 (36 M.R.S. § 605).

9. **Partners in Business:** Personal property of partners in business, when subject to taxation under 36 M.R.S. §§ 603(1) and (2), may be taxed to partners jointly under their partnership name; and in such cases they are jointly and severally liable for the tax (36 M.R.S. § 603(7)). The subsections cited refer to personal property employed in trade or in the mechanic arts, as well as to portable sawmills, mobile homes, store and office fixtures and furniture, coin-operated vending or amusement devices and radio transmitting equipment, television and radio transmitting equipment.

If the partners have places of business in two or more locations, they should be taxed in each location for the portion of property employed there. If any of the property is situated in a place other than where their business is, and if the partners or their servants or agents occupy any store, storehouse, shop, mill, wharf, landing place, or shipyard there, they should be taxed in that location.

10. **Religious Societies:** Taxable personal property held by religious societies should be assessed to the treasurer thereof in the municipality where they usually hold their meetings.

11. **Mortgaged personal property:** When personal property is mortgaged, it is deemed to be the property of the person who has it in possession (36 M.R.S. § 604).

12. **Personal Property brought into Maine after April 1:** Personal property brought into this state after April 1 and prior to December 31, by any person upon whom no personal property tax has been assessed, is taxed as other personal property in the town in which it is used for the first time in this state. (36 M.R.S. § 611).

## **Description of Personal Property**

The usual valuation book contains a column for each general type of personal property, in which the valuation and sometimes the quantity of that particular type of property is entered. Computerized valuation systems may use codes to identify categories of personal property, and have supporting supplemental records. It is important that any property codes used be clearly identified in the valuation book, preferably on the title page.

There are several reasons why personal property should be described in some detail in the valuation book or on the supporting record. One is in the case of mortgaged personal property. A specific description of the property may enable the tax claim to be assessed ahead of the mortgage claim. Once a mortgagee or other secured party legally obtains possession of property, the power of the tax collector to distrain it is lost and the distraint must be on the specific property taxes. If the property is mortgaged, the collector cannot distrain unless it has been specifically and adequately described (Howard v. Augusta). Another reason is for accurate identification of property that is subject to the Business Equipment Tax Reimbursement Program (BETR) (See below). The assessed personal property must appear in the valuation book; and the description must meet the requirements of the Uniform Commercial Code (11 M.R.S. § 9-1504).

## **Business Equipment Tax Reimbursement (“BETR”) Program**

The personal property tax paid on qualified business property first placed in service in Maine after April 1, 1995 and on or before April 1, 2007 may be completely or partially reimbursed by the State Tax Assessor upon proper application of a taxpayer. Additionally, certain retail property placed in service after April 1, 2007 is also eligible for reimbursement of property taxes paid. (36 M.R.S. §§ 6651 - 6664)

Qualified business property means property used or held exclusively for a business purpose and subject to an allowance for depreciation; or, in the case of construction in progress or inventory parts, would be subject to an allowance for depreciation when placed in service. (36 M.R.S. § 6651(3))

Qualified business property does not include land or buildings; however it does include property affixed or attached to a building or other real estate if it is used to further the particular trade or business activity, taking place at that location. It does not include components or attachments to a building if used primarily to serve the building; for example, standard heating, air conditioning, plumbing, or lighting systems. It also does not include land improvements typically made to further the use of the land; for example, driveways, parking lots, or fences. (36 M.R.S. § 6651(3)).

Types of equipment excluded from eligibility for reimbursement:

1. Office furniture (such as tables, chairs, desks, bookcases, filing cabinets and modular office partitions) and lamps and lighting fixtures.
2. Gambling machines or devices, including any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity.
3. Property used to support a telecommunications antenna used by a business subject to the state telecommunications excise tax under 36 M.R.S. § 457.
4. Natural gas pipeline including pumping or compression stations, storage depots and appurtenant facilities used in the transportation, delivery or sale of natural gas. (Note that a pipeline less than one mile in length owned by a consumer of natural gas may be eligible property).
5. Property used to produce or transmit energy for sale. A cogeneration facility is eligible for reimbursement on that portion of property taxes paid which is attributable to direct usage by a manufacturing facility.
6. Property placed in service after April 1, 2006 when located in a retail sales facility exceeding 100,000 square feet of interior customer selling space. "Interior selling space" for purposes of the exclusion includes all space related only to the selection and purchase of goods or the rental of personal property by customers at the facility.

The property owned or used by certain persons is also excluded from reimbursement. Those excluded persons include:

1. Public utilities,
2. Persons providing radio paging services,
3. Persons providing mobile telecommunications services
4. Cable television companies
5. Persons providing satellite based direct television broadcast services, or
6. Persons that provide multichannel, multipoint television distribution services.

Any business taxpayer paying tax on qualified property placed in service after April 1, 1995 is entitled to a reimbursement for all or some of the property tax paid. Application for this reimbursement must be made on forms authorized by the State Tax Assessor.

Taxpayers generally may not receive simultaneous reimbursement for the same property under both the BETR program and the High-Technology Investment Tax Credit under 36 M.R.S. § 5219-M.

## **Business Equipment Tax Exemption ("BETE")**

BETE applies to eligible business equipment first placed in service after April 1, 2007. With the exception of most retail business equipment, all other property placed in service after April 1, 2007 that was previously eligible for BETR is eligible for BETE. As noted before, retail business

equipment placed in service after April 1, 2007 continues to be eligible for BETR (except, as described below, in the case of certain very large retailers). 36 M.R.S. 6651(1).

With the exception of retail property, the definition of eligible business equipment is generally the same for both programs: equipment that is subject to depreciation and used specifically for a business purpose in Maine. Certain persons such as public utilities, telecommunications and cable television companies, and certain property such as office furniture, lighting, gambling equipment and some pollution control and cogeneration equipment do not qualify for either program. Any property eligible for the BETE exemption is not be eligible for BETR. (36 M.R.S. 6651(1)).

## **Retail Property Exclusion from BETE**

With the exception of a very limited number of retail businesses as further discussed below (see Certain Retail Property Eligible for BETE below) retail business equipment is excluded from the BETE program.

Retail business equipment excluded from BETE is defined as:

- (1) property located at a retail sales facility; and
- (2) which is used primarily (more than 50% of the time) in a retail sales activity.

A retail sales facility is all or a portion of a structure used to serve customers who are physically present at the retail facility for the purpose of selecting and purchasing goods or services at retail or for renting tangible personal property. "Retail" means a transaction between the seller and the purchaser for consumption or use, and not for resale, by the purchaser.

"Located at" the retail sales facility means in or near the facility, but within the parcel of land upon which the structure is situated. A "structure" means a building or other freestanding architectural construction at which an individual can be present to select and purchase goods or services or to rent tangible personal property.

Retail business equipment includes personal tangible property located in or near the structure and also includes property located within the parcel when that property is associated with the conduct of the sales activity. Retail property also includes all property that is affixed or attached to a retail facility or other real estate on the parcel if it is used to further the retail sales activity taking place at the retail sales facility. Retail property in a parcel includes property located at the retail facility that is used to store inventory, property stored in the open air (such as heavy-equipment rental property), or property associated with recreational services (such as amusement rides or similar equipment located in the open air or in buildings other than where tickets were purchased).

Retail sales activity is business activity associated with the selection and purchase of goods or services or the rental of tangible personal property by on-site retail customers. Retail sales activity does not include production of tangible goods as defined under 36 M.R.S. § 1752(9-B), wholesale distribution activities undertaken in warehouses, activities at call centers or other remote retail operations (such as mail order activities). In addition, retail sales activity does not include the production of services where the delivery of the services does not occur near the time of the selection and purchase of the services by retail customers or clients who are physically present at the facility. For example, the drafting of legal documents and the provision of accounting services are not considered retail sales activities. Production does not include cooking or preparing drinks, meals, food or food products by a retailer for retail sale, nor does it include any other activity specifically excluded from the definition of production under 36 M.R.S. 1752(9-B).

Only property that is used primarily in retail sales activity is excluded from the exemption. If property located at or near a retail sales facility is not used primarily in a retail sales activity then it is eligible for exemption. Thus each piece of property at the facility must be examined to determine whether or not it is used “primarily” in a retail sales activity.

In summary, most retail business equipment placed in service after April 1, 2007 will not be eligible for the BETE exemption, but will remain eligible for BETR reimbursement. Examples of businesses whose property is excluded from BETE in most circumstances are barber shops and hair salons, recreational/entertainment vendors (such as bowling lanes, video arcades, and amusement parks), restaurants, hotels, convenience and “mom and pop” stores, and most retailers of tangible goods. Examples of businesses whose property under most circumstances will qualify for the BETE exemption, are engineering firms, accounting firms, medical laboratories, and law firms. Typical business equipment excluded from the exemption may include, depending on the retail establishment and the amount of time the property is used in retail activity, the following: cash registers, inventory storage equipment, cooking appliances in restaurants or other providers of prepared food directly to on-site customers, and movie projectors and seating in movie theaters.

### **Certain Retail Property Eligible for BETE**

Despite the exclusion of most retail property from the BETE exemption, retail business equipment used by a limited class of very large retailers may fall within the exemption. The BETE exemption applies only to business equipment at retail sales facilities that exceed 100,000 square feet of interior customer selling space (i.e., space that is used by, and accessible to, customers) that is used primarily for retail sales and whose Maine-based operations derive less than 30% of their total annual revenue from sales that are made at retail facilities located throughout Maine. In other words, to qualify for the BETE exemption, a retail facility must have customer selling space in excess of 100,000 square feet and more than 70% of revenue generated from Maine-based operations must come from out-of-state sales and non-retail operations. Again, any retail property falling within the exemption may not be reimbursed under BETR.

# CHAPTER 8

## EXEMPTIONS

### Fundamental Concepts

Generally, all real property located within the state, all personal property of residents of the state, and certain personal property of nonresidents, is subject to taxation at the local level. Certain classes of property, however, are statutorily exempt from taxation, either fully or in part. Property is exempt based on its ownership, its nature, or its use. Taxation is the rule and exemption the exception, meaning that property is taxable unless it is specifically exempt by law (Owls Head v. Dodge). A property exemption must fall strictly within the purpose and intent of the statute and the burden of proving qualification for exemption rests with the property owner. Tax exemption statutes must be strictly interpreted. Any uncertainty as to exemption should be weighted in favor of taxation (Silverman v. Alton). Interpretation of the law must, however, maintain a reasonable standard.

**Municipalities cannot create exemptions.** The only exemptions that can be granted are those provided for by state or federal law. A municipality has no authority to enact exemptions or abatements, and if it attempts to do so, the assessor is not bound by such a vote (Thorndike v. Camden). The assessor is not under the direction of the municipality when performing his or her statutory duties. No municipal officer other than the assessor has authority to exempt any person or property from taxation. Because only the assessor has authority to grant exemptions, he or she must be a party to any action regarding tax exemptions to enable a court, if necessary, to order the assessor to grant exemption (Bristol v. Eldridge). If an assessor is not named in an abatement appeal, the court cannot compel that assessor to grant an exemption.

The assessor should request written evidence from any person or organization claiming exemption. Until proof of eligibility is furnished, the assessor is justified in refusing the exemption.

**Listing exempt real property.** Exempt real property should be listed as such in the valuation book separately from the certification of the list of taxable property. Assessors are required to include and value exempt real property in their inventory of property at least every five years (36 M.R.S. § 707). If this is done annually, it is relatively easy to record any change of use or ownership that may result in a return of the real estate to taxable status.

### Public Property

**United States Government.** 1 M.R.S. § 16 and 36 M.R.S. § 651(1)(A). Property owned by the United States, insofar as the Constitution and laws of the United States prohibits it, is exempt from taxation. Exemption includes courthouses, army posts, V.A. hospitals, lighthouses, post offices, and other public buildings together with their land, national parks, and forest preserves. Not all federally owned property is exempt. The real property of many federal institutions is taxable according to provisions of the acts incorporating them. Property rented by the United States, such as some post office buildings, is taxable. Maine's Attorney General has determined that property of the American National Red Cross is exempt under 36 M.R.S. § 651(1)(A) (Opinion of the Attorney General, February 16, 1982).

**State of Maine.** 36 M.R.S. § 651(1)(B). All property owned by the State of Maine is exempt from taxation. Property rented or leased by the state is taxable. Although the University of Maine is a separate corporation chartered by the state, the Legislature designated the university as an agency of the state and its property is exempt from tax.

When Maine became a state, the Articles of Separation from Massachusetts provided that all lands previously granted by Massachusetts to any religious, literary, or charitable organization would be exempt from taxation as long as the land continued to be used by these organizations. These lands retain their exempt status. 36 M.R.S. § 651(1)(C), Articles of Separation, Article Seventh, Section 1.

**Finance Authority of Maine.** 10 M.R.S. § 980. Property acquired, held, or transferred by the Finance Authority of Maine ("FAME") is exempt from all taxes and special assessments. FAME may agree to make payments in lieu of taxes to the appropriate municipality.

**Maine Health and Higher Education Facilities Authority.** 22 M.R.S. § 2067. Property owned or used by the Maine Health and Higher Education Facilities Authority or its agent is exempt from property tax.

**Maine Turnpike Authority.** 23 M.R.S. § 1971. Maine Turnpike Authority ("MTA") property is exempt from property taxes, except that businesses that lease property from the MTA are taxable to the extent of their leasehold interest in that property. The Law Court has further ruled that the use of tax exempt property by a private party does not defeat the exemption if the private party's use is the public use underlying the exemption (Howard D. Johnson Company v. King).

**Military property.** 37-B M.R.S. § 306. All real and personal property in Maine that is owned or leased by a municipality or an organization of the state military forces and used for military purposes is exempt from taxation.

**Soil and water conservation districts.** The property of soil and water conservation districts is exempt from taxation. (12 M.R.S. § 6(3))

**New Hampshire.** (36 M.R.S. § 651(1)(B-1)). Real property owned by the Water Division of the New Hampshire Department of Environmental Services and used for the preservation of recreational facilities in Maine is exempt from taxation.

**Public municipal corporations.** (36 M.R.S. § 651(1)(D)). Generally, the property of any public municipal corporation of Maine that is appropriated to public uses, if located within its corporate limits and confines, is exempt. Public municipal corporations include counties, cities, towns, plantations, village corporations, fire districts, water and sewer districts and school districts. Only property dedicated to public use is exempt (Camden v. Camden Village Corp). Public use has been defined to mean the supplying of governmental services or furnishing facilities for its citizens in regard to matters of public necessity, convenience, or welfare which is appropriate and necessary for government to provide (Greaves v. Houlton Water Co.). Property that a municipal corporation holds in trust for the purposes of its incorporation is exempt.

Land owned by one municipality and located in another is generally not exempt under this statute. However, the following property of a public municipal corporation is still exempt if located outside the limits of a public municipal district:

The pipes, fixtures, hydrants, conduits, gatehouses, pumping stations, reservoirs and dams, used only for reservoir purposes, of public municipal corporations engaged in supplying water, power or light, if located outside of the limits of such public municipal corporation; and

The pipes, fixtures, conduits, buildings, pumping stations and other facilities of a public municipal corporation used for sewage disposal, if located outside the limits of such public municipal corporation; and

Airports and landing fields, including buildings, no matter where they are located. Any structures or land contained within such airport not used for airport or aeronautical purposes shall not be entitled to this exemption (Owls Head v. Dodge). Any public municipal corporation that is required to pay taxes to another such corporation shall be reimbursed by the county where the airport is located (36 M.R.S. § 651(1)(F)).

Cemetery Corporations. Burial. The property of public cemetery corporations incorporated under the laws of Maine are exempt from taxation together with private cemetery lots, family burying grounds, tombs, and rights-of-burial (13 M.R.S. §§ 1141 - 1143 and 1301).

Refuse disposal districts (38 M.R.S. § 1704). The property (except land) of a refuse disposal district is exempt from taxation.. Districts are subject to service charges and may elect to make payments in lieu of taxes.

Municipal or regional transportation districts. The property operated by a district or leased to a private operator for providing mass transportation is exempt from taxation. (30-A M.R.S. § 3511)

Revenue Producing Municipal Facilities. The Legislature has determined that certain revenue-producing municipal facilities provide essential governmental functions. Municipal facilities acquired or constructed under authority of the Revenue Producing Municipal Facilities Act constitute public property used for a public purpose. (30-A M.R.S. Chapter 213) Municipalities cannot be required to pay any taxes or assessments on a parking facility or system, water or sewer system or telecommunications system, revenue-producing municipal facility, or any part of such a system, whether located within or outside the corporate limits of the municipality (30-A M.R.S. § 5413). This exemption does not, however, extend the exemption to any lessee or person in possession of all or part of a parking facility.

Property leased by a school administrative unit. Leased property is considered property of the unit in all respects (20-A M.R.S. § 4001(3)(C)). This has been interpreted to mean that property leased by school administrative units, including portable classrooms, is exempt from property taxation (Memorandum of Attorney General, Nov. 22, 1988).

## **Property of Institutions and Organizations**

**Benevolent and charitable institutions.** The real estate and personal property owned and “occupied or used” solely for their own purposes by benevolent and charitable institutions incorporated in Maine is exempt from taxation. (36 M.R.S. § 652(1)(A)). The law court has determined that the terms “benevolent” and “charitable” are synonymous. For brevity, this section will refer to charitable institutions, which encompasses both terms. (Maine AFL-CIO Housing Development Corp. v. Madawaska). The exemption cannot be denied because of the source of the organizations' funds, or because of any limitations in the classes or persons for whose benefit they are applied. The court has also stated that “neither a non-profit corporation's religious purposes nor its corporate affiliation with religious organizations remove it from the purview of real estate exemption statute for charitable organizations.” (Lewiston v. Marcotte Congregate Housing). In Salvation Army v. Standish, the court held that the “Christian Faith is an integral part of the organization, but that fact alone does not contradict its benevolent and charitable purpose.” However, real estate owned by an organization that is neither occupied solely for the organization's

own purposes, nor occupied by another exempt organization (36 M.R.S. § 651(1)(J)), is taxable in the jurisdiction where it is located. To be exempt, an organization must “bring its claim unmistakably within the spirit and intent of the act creating the exemption” (Holbrook Island Sanctuary v. Brooksville).

A charitable institution looking for exemption must apply in writing, including proof of entitlement for each parcel, on or before April 1 in the year in which the exemption is first requested. The application is filed with the assessors of the municipality in which the property is located. If granted, the exemption continues in effect until such time as the assessors find that the institution is no longer qualified.

To properly and completely evaluate a charitable institution’s claim for exemption, the assessors should request the following documents: 1) a report for the corporation's preceding fiscal year; 2) a copy of the property deed; 3) a copy of the articles of incorporation filed with the Maine Secretary of State; 4) a copy of the by-laws; and 5) a description of how the various elements of the property are being used.

The critical elements of this exemption are as follows:

1. The charitable institution must be incorporated in Maine.

2. The entity must operate solely for charitable purposes. )Generally, charitable organizations are those whose property or funds, in excess of ordinary expenses, are offered for the relief of the sick, poor or the distressed. They often provide a service that the community might otherwise be required to provide. If property owned by a charitable organization is subject to conditions imposed by a former owner that hinder or, in any way, limit public use, then no exemption should be granted (Holbrook Island Sanctuary v. Brooksville). An entity organized as a church does not qualify for exemption under this section (Pentecostal Assembly of Bangor v. Maidlow). However a religious organization may own property that is found to be exempt as “charitable” (Salvation Army v. Standish). The court has held that even property used in a fashion reasonably related to the principal purpose of a charitable institution can be exempt as long as its use is not profit-oriented (Maine Medical Center v. Lucci).

3. The entity's charitable organization must not be a cloak for making financial profits for the organization. The intent to incorporate in Maine for the purpose of obtaining exempt status does not, by itself, defeat the exemption. The motive of a donor to a charitable institution is not relevant in determining exemption entitlement. Property that is rented primarily for non-exempt uses is taxable. If the principal use of the property is for its own charitable purposes, the occasional rental of property does not defeat the exemption.

4. The exemption applies only to property owned by the organization. Contingent rights of ownership created by financing arrangements or mortgages do not affect ownership. (Christian Schools v. Rockport). An entity cannot claim exemption for real estate that it uses, but which is owned by a non-resident person or corporation (Nature Conservancy of the Pine Tree State v. Bristol).

5. The exemption applies only to property used solely by the organization ) for its own purposes (Lewiston v. Marcotte Congregate Housing). Ownership by a charitable institution is not enough to claim exemption. The property must be used and occupied solely for a charitable purpose. The use of the property must be established as of April 1 of the year for which exemption is first claimed. The court has held that a continuous benevolent use is not necessary, but that a dominant, seasonal use for its own purposes by a charitable

organization may qualify for exemption. If the use of the entire property is for the organization's own purposes with only occasional and incidental use by others, the exemption is allowed. The exemption applies only to that part of a property used for its own purposes or used by another exempt organization. If part of the property is used for its own purposes, and the balance is largely idle, though used incidentally for its own purposes and is held for future use, the entire property is exempt. If, however, the balance of the property is not used at all, that portion is not exempt.

6. The officers and employees of the organization cannot receive any profit from the operation of the organization, other than reasonable compensation for services connected with furthering the organization's purposes. All profits derived from the use or sale of the exempt property must be devoted to the organizational purposes. 36 M.R.S. § 652(1)(C)(2)(3).

Nonprofit nursing homes, nonprofit boarding homes and boarding care facilities which are exempt from taxation under the Internal Revenue Code ("IRC") § 501 and which are licensed by the Department of Health and Human Services pursuant to 22 M.R.S. chapter 1665, nonprofit community health service facilities licensed by the Commissioner of Mental Health and Mental Retardation; and nonprofit child-care centers incorporated in this state as benevolent and charitable institutions, are to be considered for exemption as being charitable institutions. Nonprofit means a facility exempt from taxation under IRC § 501(c)(3). 36 M.R.S. § 652(1)(A).

Nonprofit Hospital or Medical Service Organizations (24 M.R.S. § 2311). Nonprofit hospital or medical service organizations that operate nonprofit hospital service plans and are subject to the provisions of 24 M.R.S. Chapter 19 are declared to be benevolent and charitable institutions and their property is exempt from taxation. This includes, for example, organizations such as Maine Blue Cross and Blue Shield.

Federally Subsidized Housing. An owner of federally subsidized residential rental housing eligible for an exemption as a charitable institution or a literary and scientific institution may, in certain circumstances, be limited to an exemption of 50% of just value. 36 M.R.S. § 652(1)(C)(6).

Hospital service corporations: leased property. The personal property leased by or used solely for its own purposes by an incorporated, nonprofit benevolent and charitable organization exempt under section 501 of the Internal Revenue Code whose primary purpose is to operate a hospital licensed by the Department of Human Services, health maintenance organization or blood bank is exempt. 36 M.R.S. § 652(1)(K).

Literary or scientific institutions. The real estate and personal property owned and occupied or used solely for their own purposes by literary and scientific institutions is exempt from taxation. 36 M.R.S. 652(1)(B).

Schools, universities and similar institutions have traditionally qualified as literary institutions. An educational purpose, however, is not sufficient to determine exemption. Property donated to an organization with certain rights retained by the donor does not qualify for exemption (Nature Conservancy of the Pine Tree State v. Bristol). An organization is not exempt merely because its building is located on land owned by an exempt entity.

If any building, or a portion thereof, is used primarily for employee housing, that building, or part, is not exempt.

Teaching scientific courses, in itself, is insufficient to determine a scientific institution. The law court interpreted the term "scientific" to mean "devoted to the sciences generally or to some

department of science as a principal object and not merely as an unimportant incident to its important objects.” (Hurricane Island Outward Bound v. Vinalhaven). A wildlife sanctuary held in trust for a scientific institution is not itself a scientific institution (Holbrook Island Sanctuary v. Brooksville).

Greek college fraternities or sororities do not qualify for exemption as either fraternal organizations or literary and scientific organizations. However, the court has ruled that where fraternity buildings are built by a college on campus property as an integral part of its housing system for a portion of its student body; are subject to complete control by it to the extent of ouster of the fraternities at its option; and are used by the college solely for the promotion of its own purposes; then such buildings are tax exempt as literary and scientific property, even if the buildings, with college permission, are occupied by fraternity corporations which may also use them incidentally for social and recreational purposes (Alpha Rho Zeta v. Waterville).

**Agricultural fair associations.** Agricultural fair associations are generally eligible for property tax exemption (Lewiston v. All Maine Fair Assn.). No exemption is allowable to an association that holds pari-mutuel racing meets unless it has qualified the next preceding year as a recipient of the "Stipend Fund" provided in 7 M.R.S. § 62. 36 M.R.S. § 652(1)(c).

**Veterans' Organizations.** Real and personal property owned and occupied or used solely by posts of the American Legion, Veterans of Foreign Wars, American Veterans (AMVETS), Sons of Union Veterans of the Civil War, Disabled American Veterans, and Navy Clubs of the U.S.A. are exempt from taxation. Generally, the requirements described for benevolent and charitable organizations regarding use of property and proceeds, benefits to officers and employees, and financial reports apply. 36 M.R.S. § 652(1)(E).

**Chambers of Commerce and Boards of Trade.** Property owned by chambers of commerce or boards of trade in Maine are exempt. The organization must file, upon request of the assessors, a report for the preceding fiscal year. 36 M.R.S. § 652(1)(F).

**Religious Societies and churches.** Houses of religious worship, including vestries, and the pews and furniture within the same, and the land upon which they stand and as much as may be necessary for convenient access (Osteopathic Hospital of Maine v. Portland); property used by a religious society as a parsonage to the value of \$20,000 (not adjusted by the certified ratio) is exempt, but any portion of a parsonage which is rented is subject to taxation. Personal property in a parsonage is exempt up to \$6,000. A parsonage is the principal residence provided by the religious society for its clergy. It does not have to be located in the same municipality as the church to qualify for exemption. Some of the property of religious societies may qualify for exemption elsewhere and thus, under other provisions of the statutes, may be entitled to exemption. (Ferry Beach Park Assn. v. Saco). 36 M.R.S. § 652(1)(G).

**Fraternal organizations.** The real and personal property owned by or held in trust for fraternal organizations, except college fraternities, operating under the lodge system which is used solely by a fraternal organization for meetings, ceremonials, religious or moralistic instruction, including all facilities appurtenant to such use and used in connection therewith, is exempt from taxation. If only a portion of a building is used for these purposes, a partial exemption is appropriate. The same conditions as set for the chambers of commerce regarding financial reports, use of profits and officer benefits apply. 36 M.R.S. § 652(1)(H).

**Leased Exempt Property.** If real or personal property of one of the institutes and organizations listed in 36 M.R.S. § 652 is leased or used by another of those organizations solely for their own purposes, that property remains exempt. 36 M.R.S. § 652(1)(J).

## Property of Individuals

**Homestead Exemption.** Maine law exempts a certain amount of just value from the residential property owned by Maine residents and located in the municipality where the owner permanently resides. A property owner must apply for this exemption before April 1 of the year in which the owner first requests exemption. For 2015, the exemption amount is \$10,000. For 2016, the exemption amount is \$15,000. For 2017 and later years, the exemption is \$20,000 (36 M.R.S. § 681 - 689)

The following definitions apply to this exemption.

1. **Homestead.** This refers to any residential property in Maine assessed as real property owned by an applicant or held in a revocable living trust for the benefit of the applicant, and occupied by the applicant as the applicant's permanent residence.

2. **Permanent residence.** A permanent residence is a place where an individual has a permanent home, to which the individual intends to return whenever absent. An individual may have only one permanent residence at a time. The assessor determines whether an applicant is a permanent resident of the Maine, has a permanent residence in Maine for the previous 12 months.

**Veterans.** A veteran is any person who served on active duty in the armed forces of the United States during any federally recognized war period. A qualified veteran, if discharged, retired, or separated from the armed forces, did so on other than dishonorable conditions. A qualified veteran includes certain family members, such as an unmarried spouse, a child, or a parent of a veteran. 36 M.R.S. § 653.

Veterans (or qualified family members) claiming must apply with proof of entitlement to the assessor prior to April 1 of the year in which the exemption is first claimed. The veteran must be a Maine resident. The exemption applies only to property in the town where the veteran lives. Veterans, and individuals claiming on veterans' records, qualify irrespective of the residency of the veteran at the time of entering the service (Lambert v. Wentworth). The application and proof of entitlement are confidential and cannot be made public.

A veteran may claim only one exemption under 36 M.R.S. § 653. However, if both husband and wife are qualifying veterans, then both are entitled to exemptions on property that they own jointly.

Property conveyed to a person for the express purpose of obtaining an exemption, except property transferred between spouses, is not exempt.

The estate of a veteran, including real and personal property, together with the interest of a spouse in property held in joint tenancy, is exempt up to \$6,000 of just valuation (\$7,000 for veterans who served during a war period prior to World War II), provided: (1) the veteran is at least 62 years old, or (2) the veteran is receiving compensation from the United States Government for total disability, either service or non-service connected, as a veteran; i.e., a pension or disability payment from the Veterans Administration.

**Paraplegic veterans.** The estate of a veteran, is exempt up to \$50,000 of just valuation for a specially adapted housing unit, provided that the veteran is paraplegic within the meaning of 38 U.S.C., and has received a grant from the United States Government for specially adapted housing.

The exemption provided in this paragraph applies to the property of an unremarried widow or widower, minor child, or parent of a deceased veteran, including property held in a revocable living trust for the benefit of the unremarried widow or widower, minor child, or parent of a deceased veteran.

Parent of veterans. The estate of a parent of a deceased veteran is exempt from taxation up to \$6,000 of just valuation (\$7,000 for a parent of a deceased veteran who served during a war period prior to World War II), provided he or she is: (1) unremarried; (2) at least 62 years old, and (3) in receipt of a pension or compensation from the federal government based on the service connected death of the veteran child. Insurance benefits qualify as compensation from the federal government (Opinion of the Attorney General, May 18, 1973).

Widows and widowers of veterans. A veteran's widow or widower is exempt from taxation on his or her estate up to \$6,000 of just valuation (\$7,000 for the widow or widower of a deceased veteran who served during a war period prior to World War II), provided: (1) he or she is unremarried; and (2) receiving compensation as a widow or widower of a veteran from the United States Government or the veteran would, if living, be entitled to an exemption.

The term "unremarried" when used to describe a parent or widow or widower of a veteran, means a person who is neither a divorced spouse nor parent of a veteran, nor a person who has remarried. A widow or widower who marries subsequent to the veteran spouse's death loses his or her status as a veteran's widow or widower and does not regain that status even if the remarriage is terminated by death or divorce.

The court has stated that: ". . . [A] widow is a woman whose husband is dead and who has not remarried.... On the death of her second husband [she] became his widow, and did not revert to her former status as the widow of [her first husband]." (Solon v. Holway).

Therefore, even though a widow or widower of a veteran who has remarried but whose subsequent marriage has terminated may nevertheless receive federal benefits based on that first marriage, they have surrendered their status as an unremarried widow or widower of their first spouse and under Maine law does not revert to that status upon the termination of the subsequent marriage. This analysis does not apply unequivocally to the situation where the subsequent marriage may be terminated by annulment, in which case the legal status of the parties involved and the effect of that status on the applicability of the tax exemption must be determined on a case by case basis (Opinion of the Attorney General, June 23, 1971). When a qualified veteran dies without a will leaving property and is survived by a widow or widower and minor children, they are jointly entitled to only a single exemption.

An unremarried widow or widower of a paraplegic veteran who, if alive, would have qualified for the \$50,000 exemption under 36 M.R.S. § 653(1)(D-1) is also entitled to that exemption upon written notification of the assessor of the municipality where he or she resides and furnishing proof of entitlement.

Minor children. The estate of a minor child (less than 18 years old) of a deceased veteran is exempt from taxation up to \$ 6,000 of just value (\$7,000 for a minor child of a deceased veteran who served during a war period prior to World War II).

Even though a widow or widower or minor child fails to apply by April 1, the assessor must make abatement if an application is filed within one year of commitment, provided the veteran died during the 12 month period preceding the April 1 for which the tax was committed (36 M.R.S. § 841(4)).

In determining the local assessed value of the exemption, the assessor must multiply the amount of the exemption by the declared ratio from the most recent municipal valuation return. Local assessors cannot calculate a veteran's taxable estate by reducing its valuation by the full amount of the available statutory exemption since this would create a disparity in the taxation of veterans' estates of like value statewide, and would therefore violate Article IX, Section 8 of the Maine Constitution.

Property Tax Bulletin No. 7 provides guidelines for proof of entitlement to this class of exemptions.

## **Federally Recognized War Periods as of April 1, 2015**

- World War I: April 6, 1917 through November 11, 1918;
- World War I (Service in Russia): April 6, 1917 through April 1, 1920;
- World War II: December 7, 1941 through December 31, 1946;
- Korean Conflict: June 27, 1950 through January 31, 1955;
- Vietnam Era: February 28, 1961 to May 7, 1975;
- Vietnam Era: August 5, 1964 to May 7, 1975. For the period, February 28, 1961 through August 4, 1964, federal law restricts the definition of the Vietnam Era war period to relating only to veterans who served in the Republic of Vietnam; and
- Persian Gulf War: August 2, 1990 to a date that the U. S. Government recognizes as the end of the Persian Gulf War. This period also includes Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn.

### **Other Recognized Service Periods:**

- February 28, 1961 through August 4, 1964 (Maine property tax exemption applies to all veterans who served during February 28, 1961 through May 7, 1975, regardless of where they served);
- August 24, 1982 through July 31 1984; and
- December 20, 1989 through January 31, 1990.

**Servicemen, nonresidents.** The Servicemembers Civil Relief Act ("Act," 50 U.S.C. Appendix §§ 501-597b) provides that when a nonresident servicemember is present in Maine in compliance with military orders that servicemember has a broad immunity from personal property tax, whether or not his or her home state taxes personal property. The Act defines the tax situs of personal property, including motor vehicles, but excludes personal property used in a trade or business, to be the state of the serviceman's domicile. This means that such servicemember's individually owned personal property is exempt from taxation. The U.S. Court of Appeals has further ruled that regardless of where a servicemember is stationed, his or her personal property wherever located can be taxed only by the state of domicile (U.S.A. v. Arlington County). The Act also exempts from tax a mobile home or house trailer that has not been permanently affixed to land, although it may be connected to water, sewerage and electrical facilities. For the purposes of the Act, mobile homes are considered personal property. (U.S.A. v. Chester County Board of Assessment).

**Blind persons' estates.** A qualified blind person is entitled to an exemption up to the just value of \$4,000 against residential real estate. To qualify, a person must be a Maine resident who is legally blind as determined by a licensed Doctor of Medicine, Doctor of Osteopathy or Doctor of Optometry. Property cannot be conveyed to a blind person merely for the purpose of obtaining an exemption. If a blind person has property in more than one jurisdiction, the exemption should be prorated in proportion to the taxable value in each jurisdiction. 36 M.R.S. § 654.

**Personal Property.** Individuals may be entitled to exemption for the personal property they own as provided under the heading Exempt Personal Property further in this chapter.

## Other Miscellaneous Exemptions

**Animal waste storage facility.** The owner of an animal waste storage facility that obtains a certification from the Department of Agriculture pursuant to 7 M.R.S. § 4204 is entitled to an exemption. 36 M.R.S. § 656(1)(J).

**Urban renewal authority property.** The property of urban renewal authorities is public property used for essential public and governmental purposes and is exempt from property taxation. The exemption terminates when the authority sells, leases, or otherwise disposes of the property to a redeveloper (30-A M.R.S. § 5114(2)).

**Water corporations.** The aqueducts, pipes, and conduits of any private corporation supplying a municipality with water are exempt when the municipality takes water without a charge for fire protection (36 M.R.S. § 656(1)(A)). The other property of water corporations is taxable.

**Reservations.** Federal law prohibits Maine from applying property tax to allotted lands held in trust for an Indian tribe or members of a tribe by the federal government. Property that is owned in fee by tribe members or non-members within reservations, however, is taxable.

**Minerals and Mining Property.** Mines of naturally occurring metallic minerals are exempt for ten years after opening (36 M.R.S. § 656(1)(B)). Mining property, except for buildings and land (excluding the value of mineral rights) is subject to state excise tax in lieu of property taxes (36 M.R.S. § 2854).

**Privately Owned Airports.** The landing area of a privately owned airport, the use of which is approved by the Department of Transportation, is exempt provided that the owner grants free use of the landing area to the public (36 M.R.S. § 656(1)(C)).

**Pollution Control Facilities.** Air and water pollution control facilities certified by the Department of Environmental Protection are exempt. Exemption entitlement is fixed on April 1; therefore, certification by the Department of Environmental Protection after that date negates exemption status for that tax year (*Connecticut Bank & Trust Co. v. Westbrook*). The Department of Environmental Protection is required to issue a determination regarding certification by April 1 for pollution control facilities for which it received a completed application by December 15 of the preceding year (36 M.R.S. § 656(1)(E)). Water pollution control facilities must have a capacity to handle 4,000 gallons of waste per day.

## Exempt Personal Property

**Agricultural Products.** Agricultural produce, including forest products, logs, pulpwood, wood chips, and lumber are exempt from taxation (36 M.R.S. § 655(1)(C)).

**Beehives.** All beehives are exempt from personal property taxation (36 M.R.S. § 655(1)(O)).

**Camper Trailers.** Camper trailers are exempt from personal property tax if the excise tax is paid prior to property tax commitment. (36 M.R.S. § 1485. If a camper trailer is subject to real property tax and excise tax is paid prior to property tax commitment, a credit against the property tax is allowed for the amount of excise tax paid. See Property Tax Bulletin No. 6.

**Farm Machinery.** Farm machinery used exclusively in production of hay and field crops, excluding motor vehicles is exempt up to an aggregate value of \$10,000 (36 M.R.S. § 655(1)(M)). See Property Tax Bulletin No. 17.

**Furniture.** Household furniture, including televisions, musical instruments, farming utensils, clothing, and mechanical tools, is exempt. Tools do not include heavy or complicated machinery (36 M.R.S. § 655(1)(E)).

**Industrial Inventories.** Industrial inventories, including raw materials, goods in process, and finished products are exempt (36 M.R.S. § 655(1)(A)).

**Intangibles.** Intangibles such as stocks, bonds, certificates of deposit, and bank accounts are exempt from taxation. The definition of personal property is limited to tangible property (36 M.R.S. § 601).

**Livestock.** All farm animals are exempt (36 M.R.S. § 655(1)(D)).

**Out-of-State Property.** Personal property in another state or country and legally taxed there is exempt (36 M.R.S. § 655(1)(J)).

**Property in Transit.** Property in possession of a common carrier while in interstate transportation or held awaiting further transportation to the final destination is exempt (36 M.R.S. § 655(1)(G)).

**Radium.** All radium used in the practice of medicine is exempt from taxation (36 M.R.S. § 655(1)(F)).

**Snowmobiles.** Registered snowmobiles are exempt from taxation. Any non-registered snowmobile valued at \$1,000 or more is subject to a personal property assessment (36 M.R.S. § 655(1)(L)).

**Stock in Trade.** Stock in trade, including inventory held for resale by a distributor, wholesaler, retail merchant, or service establishment is exempt (36 M.R.S. § 655(1)(B)).

**Vessels.** A vessel owned by an out-of-state resident and being built or repaired in Maine is exempt. (36 M.R.S. § 655 (1)(H)). A pleasure vessel owned by a nonresident and being stored or repaired in Maine is exempt, unless the vessel was regularly kept in Maine during the prior year (36 M.R.S. § 655 (1)(I)).

**Individually owned personal property.** All items with a just value of less than \$1,000 are exempt from property taxation except for: (a) items used for industrial or commercial purposes; and (b) vehicles and camp trailers as defined in 36 M.R.S. § 1481 not subject to an excise tax. (36 M.R.S. § 655(1)(P)).

**Snow-grooming equipment.** Snow-grooming equipment registered under Title 12, section 13113. (36 M.R.S. § 655(1)(T)).

## **Property Subject to Excise Tax in Lieu of Property Tax**

**Aircraft.** All aircraft are subject to an excise tax for the privilege of operating in the state in lieu of a personal property tax. Aircraft owned on April 1 but on which the excise tax has not been paid prior to the commitment date is subject to personal property tax (36 M.R.S. § 1482).

**Boats and Watercraft.** Watercraft operated in Maine is subject to the watercraft excise tax under 36 M.R.S. §§ 1501 - 1506 in lieu of personal property tax. Statutory exemption from the excise tax does not subject a watercraft to personal property taxation.

**Mining.** Mining property is subject to excise tax in lieu of property tax (36 M.R.S. §§ 2851 – 2866).

**Motor Vehicles.** All motor vehicles, including tractors, registered for use on the highways are subject to an excise tax in lieu of property tax. However, if the excise tax is not paid prior to commitment date for property taxes, then they are taxable as personal property. See Property Tax Bulletin No. 13 for further detail. 36 M.R.S. § 1483 lists exemptions from excise tax.

**Railroad companies.** Railroad companies are subject to an annual state excise tax and are exempt from all local property taxation on land and fixtures inside the located rights-of-way. All buildings of railroad companies are taxable whether situated within or without the located right-of-way and buildings leased from the railroad are taxable to the lessee. The court has ruled that land within a right-of-way that was leased to another for construction of a filling station retained its exempt status (Portland Terminal Co. v. Hinds). Generally, the located right-of-way is restricted to a 66 foot wide strip through towns. Located rights-of-way over which railroad service has been abandoned are taxable (36 M.R.S. §§ 561 and 2623).

**Telecommunications equipment.** Qualified telecommunications equipment is subject to the state telecommunications excise tax in lieu of personal property tax. 36 M.R.S. §§ 457 – 458.

# CHAPTER 9

## SUPPLEMENTAL ASSESSMENTS

**Generally.** Whenever assessors determine that taxable real or personal property has been omitted from an assessment or that an assessed tax is invalid or void because of some illegality, error, or irregularity in the assessment, then a supplemental assessment should be made provided that it is issued within three years from the last assessment date (36 M.R.S. § 713). The term “invalid” is defined in Black’s Law Dictionary as not legally binding, while “void” means something that is of no legal effect.

**Omitted property.** A supplemental assessment for omitted property is appropriate only when it is clear that the property had not been previously assessed. Supplemental assessments cannot be used when assessors have misjudged the quantity, quality or value of the property assessed. Supplemental assessments cannot be used to correct an erroneous judgment of value (Dresden v. Bridge). A supplemental assessment for omitted property is justified if the assessor's description of the property originally taxed was specific enough as to the items assessed to clearly support proof of omission. If an original assessment described property as 500 acres of land and the assessor later discovers that the property contains 600 acres, the assessor may make a supplemental assessment for the omitted 100 acres. If, however, the property was originally described as forest land and the value of 500 acres was included, the later discovery of 100 additional acres cannot be subject to a supplemental assessment. The original description of the property as forest land is not specific enough to support a supplemental assessment.

The Maine Supreme Court has ruled that, where an assessment against “bank stock and money at interest” was issued, a supplemental assessment of “other stock and scrip,” omitted because of ignorance of the assessors of such property, was valid. The additional property had clearly been omitted from the original assessment. In the same case, where the assessors assessed “all money at interest,” a subsequent supplemental assessment of “bonds” (a type of money at interest) was invalid (Sweetsir v. Chandler).

In the case where property was omitted from the list of taxable property under the mistaken impression that it was exempt, but subsequently discovered to be taxable, the court has ruled that it could be included in a supplemental list (Athens v. Whittier).

**Invalid or void tax.** An invalid or void tax by reason of illegality, error, or irregularity in assessment can be corrected by supplementing the person who owned the property for the year in which it was erroneously taxed. A tax against poorly described or undescribed real estate is void even though it could not be enforced by lien procedures. Such an assessment could be enforced by an action of debt and is characterized as imperfectly assessed; and supplemental assessments to correct imperfect assessment are not allowed.

A tax assessed against the real estate of “the estate of John Doe” is void since real estate of a deceased person cannot be taxed to his or her estate. A supplemental tax assessment against the personal representative of the deceased would correct the void assessment.

If the original assessment was made to the correct person, a supplemental assessment must be made to the same person. It must be made to the owner as of April 1, and not, for example, to a guardian subsequently appointed (Sweetsir v. Chandler).

**Omitted tax.** A supplemental assessment may be made during the municipal budget year whenever assessors have inadvertently or erroneously omitted any tax to be raised by the municipality from their assessment or commitment. This would properly include the municipality's proportional share of county tax payable during that municipal year.

**Responsible parties.** In municipalities not part of a primary assessing area the assessors currently in office may make a supplemental assessment even though they may not have participated in the original assessment. The assessors must use the same assessment techniques and principles for the supplemental assessment that were used in developing the original assessment, including that year's certified ratio. The tax rate applied to the supplemental assessment is the rate for the original tax year, not the rate for the year in which the assessment is actually issued.

In primary assessing areas, the chief assessor certifies the supplemental assessment to the municipal officers by a supplement to the valuation list. The municipal officers must assess the property according to the principles upon which the previous assessment was made.

A supplemental assessment is committed to the collector who is in office at the time of the assessment with a certificate stating that the original assessment was invalid or void or property was omitted and that the powers in the previous warrant, naming the date of it, are extended to the supplemental list. The court has held that, where selectmen/assessors sign a supplemental tax list as selectmen rather than assessors, the error is correctable (Athens v. Whittier). However, where a supplemental list is not accompanied by any certificate that property was omitted from the original list by mistake, the a warrant committing supplemental assessments signed by the assessors describing themselves as selectmen is insufficient to prove the existence of such a list (Topsham v. Purinton).

Supplemental taxes are valid even though they may result in raising more money than was authorized by the 5% overlay of tax provision (36 M.R.S. § 713).

Interest accrues on unpaid tax balances of a supplemental tax beginning on the 60th day after the date of commitment of the supplemental tax, or the date interest accrues on delinquent taxes under the original commitment, whichever occurs later. The rate of interest is the same as is applicable to the current year's property tax.

If a lien is declared invalid after foreclosure and the former owner recovers the property, the assessors may make a supplemental assessment on the property and that owner for any year back to the year of foreclosure (36 M.R.S. § 713-A).

**Collection.** The powers in the original collector's warrant extend to the current collector for a supplemental assessment. Although the tax lien mortgage process can be used to enforce a supplemental assessment against real estate, this process cannot be used where the property has been sold and the transfer recorded between the date of the invalid assessment and the date of the supplemental assessment. In such a case, the lien is terminated (36 M.R.S. § 948).

The court has held that a taxpayer cannot argue for the recovery of his or her tax because the assessors intentionally neglected to assess someone else's property (Greenville v. Blair). However, an individual taxpayer may petition the court to compel assessors to assess omitted property in the town. In any event, valuation must be set by the assessors according to their judgment and it cannot be revised by a court order (Knight v. Thomas).

# CHAPTER 10

## ABATEMENTS

### Fundamental Concepts

Abatement is the process by which assessed taxes that are determined to be excessive, may be reduced either in whole or in part. Abatements may be made because of errors in valuation by the assessor, because of overvaluation, ability to pay or because they are simply uncollectible. Abatement requests must be properly classified to determine who has authority to decide the issue and under what condition. Although abatements are permitted by law, assessors do not have the authority to grant them arbitrarily. Tax assessments are always presumed to be valid and the burden of proving eligibility for abatement falls on the party filing the request.

Neither municipal officials, nor attorneys retained to collect taxes by suit, have authority to abate, settle or compromise taxes, except in conformity with the law (Frankfort v. Waldo Lumber Co.). Neither can a municipality vote to direct the assessors to grant specific abatements (Thorndike v. Camden). In fact, an Opinion of the Justices (1979) (Me. 402 A.2d § 601) declared a proposed legislative resolve to authorize a town to abate certain property taxes unconstitutional. The underlying principle was that it was never within the bounds of legitimate legislation to enact a special law granting a privilege to one town in a particular case by overriding the operation and effect of general law, but leaving all other towns under its operation. Such an attempt violates the equal protection and special legislation clauses of the Maine Constitution (Art IV, Pt. 3, section 13 and Art. I, section 6-A respectively).

The statutes that grant authority for abatements are stated in terms of the ordinarily permissive "may," but it is an accepted principle of statutory construction that when the word "may" is used in imposing a public duty upon public officials in the performance of their duty for the public good, and the public or some third party has an interest in the exercise of that power, then the word "may" is read "shall." The exercise of the power is viewed imperative as a matter of legislative intent. (Collins v. State).

Assessors, appellate boards and the courts, when considering questions of over-valuation, are required by law to implement the general rule of equality and uniformity of taxation required by constitutional and statutory provisions.

### Types of Abatements

**Error in valuation.** The only remedy available to a taxpayer who believes his or her property to be over-valued is an abatement request, in writing, to the assessor within one year from the commitment of the tax (36 M.R.S. § 841(1)), (Perry v. Lincolnville). For commitments made after April 1, 1992, an abatement request must be made within 185 days from commitment of taxes. Failure to request valuation abatement within this time period precludes further appeal procedures. Municipal officers have no authority to grant an abatement to correct an error in valuation.

An abatement request to correct a partially void assessment because of exemption or mistaken ownership may properly be included in this category of overvaluation and is subject to an action for abatement.

An abatement based on overvaluation is the proper recourse for any legally assessed tax against the owner in the taxing jurisdiction. The abatement amount must be relative to the just value of other property in the taxing jurisdiction. The abatement seeker shoulders the burden of proving that his or her assessed valuation in relation to just value is manifestly wrong (Delta Chemicals v. Searsport) or that an unjust discrimination exists (Sears, Roebuck & Co. v. Presque Isle). The courts have said that the sales price is evidence of market value, that is used in determining property value for tax assessment purposes. Where average property in the area (of two lots) was assessed at 108% of sales price, and two lots were assessed at 147% and 128% of sales price respectively, the assessed value of those lots was “manifestly wrong.” (Weekley v. Scarborough). In determining just value, the assessment ratios contained in the assessment ratio studies of the Property Tax Division are prima facie evidence of the claimed municipal ratio, unless a party to a proceeding establishes that this ratio was derived in a manner contrary to law or proves the existence of a different ratio. In any proceeding related to a protested assessment, it is a sufficient defense of the assessment to show that it is accurate within reasonable limits of practicality, except when a proven deviation of 10% or more from the relevant assessment ratio exists (36 M.R.S. § 848-A).

**Illegality, irregularity, or error.** The assessor, within one year from commitment, or the municipal officers between one and three years from commitment, may abate an assessment to correct any illegality, error, or irregularity (36 M.R.S. § 841(1)). If the assessor properly requested a list of property under 36 M.R.S. § 706, the taxpayer must have complied with this request or be barred from appeal. “Assessor” means the assessor or assessors in office at the time the abatement request is filed. An assessor cannot refuse an abatement on the grounds that there is no appropriation for abatements in the municipal budget.

Erroneous assessments that require an abatement on the assessors own initiative include situations where property was assessed to someone not taxable for it, where an assessment was void, or where a taxpayer entitled to exemption was assessed. If property is exempt, the law states that the taxpayer does not need to include it in a filed list of his or her estates. (36 M.R.S. § 706).

In situations of a clearly illegal assessment, assessors should, on their own initiative, correct assessments to eliminate the need for a taxpayer to appear before an appeals tribunal that may not be in a position to consider the particular objection made.

The abatement/supplement process cannot be used to perfect an imperfect but valid assessment. For example, if a person is assessed for land he or she does not own, then the assessment is illegal and the tax should be abated and a supplemental tax assessed against the proper owner. However, if the tax assessed is not accompanied by a description of the land in the assessment record, then the tax, being valid, cannot be abated simply to issue a more perfect supplemental assessment.

**Hardship or poverty.** The municipal officers, or the State Tax Assessor for the unorganized territory, may on their own knowledge or based on a written application, within three years from commitment, make abatements of property taxes on the primary residence assessed to a person who, by reason of hardship or poverty, is unable to pay (36 M.R.S. § 841(2)). Municipal officers have an obligation to inform people unable to pay tax of their right to seek abatement and to assist the taxpayers with the abatement application. Hearings and proceedings to decide hardship or poverty abatements must be held in executive session, and materials submitted in support of the application, including the application itself, are confidential. The three year period for abatements under this section may be extended by the municipal officers.

The statutes provide no guidance as to reasonable criteria to be used to evaluate a person's ability to pay. In Macaro v. Windham\*, the court reviewed a record which revealed that the plaintiff's

monthly expenses, exclusive of real estate tax and repayment of a debt to her mother for paying off a bank mortgage on the taxed property, exceeded the taxpayer's monthly income during the years in question. Even though the plaintiff owned a valuable asset, her mobile home, the court found that in the absence of any ability to repay a loan, reliance on the existence of that asset to deny poverty abatement would defeat the purpose of this law. The purpose of the law is to prevent towns from forcing sale of a property to collect taxes from those otherwise unable to pay. In arriving at necessary expenses, the court considered mortgage payment on a modest mobile home, operating expenses of a vehicle, driveway snowplowing, car and homeowner insurance and personal debts. If it is clear that an applicant's poverty is undisputable, he or she is entitled to abatement. It is not inappropriate to delay an abatement request, with the approval of the applicant, if there is real possibility that the taxpayer's financial circumstances might significantly improve.

**Inability to pay after two years.** If, after two years from the date of assessment, a collector is satisfied that a property tax committed for collection cannot be collected by reason of death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay, he or she must notify the municipal officers in writing and under oath, stating the reasons why the tax cannot be collected. The municipal officers may, after due inquiry, abate the tax or any portion thereof (36 M.R.S. § 841(3)). The purpose of this statute is to relieve the collector of the obligation to collect a tax that is, in fact, uncollectible. Municipal officers should not confuse an uncollectible tax with negligent or ineffective collection efforts. In the latter case, the collector should be held to the statutory responsibility of collecting the tax. Taxes can be enforced by tax lien mortgages and collectors should make every effort to collect taxes due. Furthermore, the mere fact of death, absence, insolvency, or bankruptcy is not sufficient to abate a tax. Taxes may be recoverable in each of these situations through heirs, executors, court distributions for court-appointed administrators, or the subsequent location of a taxpayer.

**Minor Amounts.** Municipal officers may discharge a minor tax or an amount that is financially burdensome to collect. (36 M.R.S. § 760-A (1))

**Veteran's widowed spouse or minor child.** Notwithstanding the failure to comply with 36 M.R.S. § 706, an assessor, on written application within one year from the date of commitment, may make abatement in the case of the unremarried widowed spouse or minor child of a veteran, if the spouse or child would be entitled to exemption under 36 M.R.S. § 653(1)(D), except for her or his failure to make application and file proof within the time set by 36 M.R.S. § 653(1)(G) so long as the veteran died during the 12-month period preceding the April 1 for which the tax was committed (36 M.R.S. § 841(4)).

**Municipal discount.** At any meeting when it votes to raise a tax, a municipality may, by vote, determine that all taxpayers who pay their taxes prior to specified times shall be entitled to an discount of not more than 10% which is specified in the vote (36 M.R.S. § 505(5)).

## **Abatement Procedures**

**Method of seeking abatement.** Current statutes require that applications for abatement, initiated by a taxpayer, be timely submitted within 185 days from commitment in writing. Formerly, the court ruled that an application need not be in writing unless required by the assessor (Levant v. Penobscot County Commissioners). When applying for abatement of taxes, the burden of showing adequate reason for it is on the applicant, and he or she must prove or demonstrate enough justification to make a reasonable request for relief (Shawmut Manufacturing Co. v. Benton).

The abatement process may be continued by a subsequent owner of the assessed property. Where true and perfect lists were filed with the assessor and the record owner of the property

requested, but was denied an abatement by the assessor, a subsequent purchaser timely pursued administrative appeal under authority of the prior record owner. The court ruled that even though the purchaser was not the owner on the date established by the statute as the record date for the assessment, that fact should not be used as a device to limit the purchaser's ability to seek judicial review of the assessor's denial of the abatement request (Freeport Minerals Co. v. Bucksport).

If a taxpayer is given notice by mail to furnish a true and perfect list of his or her taxable estate and or she fails to comply, then he or she is barred of his or her right to make application to the assessor or any appeal for any abatement of his or her taxes, unless he or she furnishes the list with his or her application and satisfies the assessor that he or she was unable to furnish it at the appointed time (36 M.R.S. § 706). A person who files a true and perfect list of taxable property, but who refuses to answer all inquiries in relation to the nature and situation of his or her property is barred from appeals of the decision of the assessors (Lambard v. Kennebec County Commissioners). If the assessor fails to give notice by mail, the taxpayer is not barred the right to seek abatement provided that, upon demand, the taxpayer answers, in writing, all proper inquiries as to the nature, situation, and value of his or her taxable property (36 M.R.S. § 706).

The court has held that reasonable excuse or good cause does not satisfy the requirement of inability to furnish a list (see Inventory of Taxable Property in Powers and Duties, Chapter 3).

There is language in relevant Superior Court cases that, if assessors accept or deny an abatement requested by a taxpayer who has failed to provide a true and perfect list of his or her estates as required, the assessors may be deemed to have waived the taxpayer's bar to appeal his or her decision.

**Notification of decision.** For hardship or poverty abatement requests, the municipal officers must provide the applicant with written notification within 30 days of application. The notification must include the specific reasons for the decision and must inform the applicant of the right to appeal and the procedure for requesting an appeal (36 M.R.S. § 841 (2)(F,G)).

For other abatement requests, assessors must give applicants written notice of their decision within ten days after they take final action. The notice must state that the applicant has 60 days from the date that the notice is received to appeal the decision and also identify the board or agency designated by law to hear the appeal. If the assessor fails to give notice of his or her decision within 60 days from the filing of the application, the application is deemed to have been denied and the applicant may appeal to the next tribunal unless he or she has agreed in writing to a further delay by the assessor (36 M.R.S. § 842).

**Certification/records.** Whenever an abatement is made, other than by the State Tax Assessor, the abating authority shall certify it, in writing, to the collector, who is thereby discharged from further obligation to collect the tax. When an abatement other than for hardship or poverty is made, the abating authority must provide a report to the municipality at its annual meeting, or to the mayor and aldermen of cities by the first Monday in each March. The report must be made within 30 days of the abatement and be available to the public. The report must include the beneficiaries, the abatement amount, and the reason for abatement. (36 M.R.S. § 841(5)).

A taxpayer who has been granted an abatement for taxes paid is entitled to interest on the amount of overpayment at the same rate that was established by the municipality, unless the municipality has set a rate in accordance with 36 M.R.S. § 506-A.

**Foreclosure.** A delinquent taxpayer is not entitled to a hearing before foreclosure of his or her title where he or she did not challenge the amount of the tax through the abatement process and

where he or she retains other due process rights to protect his or her interest in the property (Auburn v. Mandarelli).

A municipality's title to property acquired under the tax lien mortgage statute is absolute. A town has no obligation to return property to a former owner.



# CHAPTER 11

## APPEALS

### Legal Foundations

**Introduction.** Taxpayers are entitled to legal redress if their property has been excessively valued for tax purposes. Through the abatement and appeal process, the assessment stands until and unless the taxpayer can demonstrate that he or she is entitled to abatement (Penobscot Chemical Fibre Co. v. Bradley).

The mere fact that a property tax is high is not grounds for abatement. The fact that valuations in prior years were less than in the current year is inadmissible as evidence of overvaluation (Penobscot Chemical Fibre Co. v. Bradley). Assessors may make adjustments to property valuations. Sporadic differences in valuations do not necessarily constitute discrimination and simple errors of judgment by assessors in and of themselves do not provide grounds for relief (Kittery Electric Light Co. v. Kittery).

The standards established by the courts for reviewing tax assessments indicate an evolution of thought, and a sequential summary of several of the more significant of these judicial findings is perhaps the most enlightening approach to understanding the predisposition of the court with respect to its role in matters of overvaluation and interpretation of just value requirements. Selected decisions follow:

**1904 (Penobscot Chemical Fibre Co. v. Bradley).** The assessor's valuation of other property in town and the value placed on the taxpayer's property in other years is inadmissible, but the value of similarly situated property as shown by actual sales and opinions of properly qualified witnesses is admissible on the question of true value.

**1923 (Shawmut Manufacturing Co. v. Benton).** If a taxpayer is taxed on the basis of just value while by some scheme of the assessors other similar property is assessed at less than its just value, then the taxpayer is entitled to relief.

**1925 (Spear v. Bath).** A taxpayer claiming to be overrated with reference to actual value, need not prove fraud or intentional overvaluation, but he or she must prove that the valuation is manifestly wrong, and he or she must establish indisputably that he or she is aggrieved.

**1926 (Cumberland County Power and Light Co. v. Hiram).** A taxpayer whose property alone is taxed at 100% of its true value is entitled to have his or her assessment reduced to the same percentage of value at which others are taxed, but a claim of discrimination must be supported by something which in effect amounts to an intentional violation of the essential principle of practical uniformity.

**1935 (Sweet v. Auburn).** For tax valuation purposes, due consideration must be given to all uses to which property may be put by the owner, and its value is measured by what it would bring at fair public sale, when one party wishes to sell and another to buy. In a time of crisis, where the true worth of real estate by reference to the price the property would bring on the market is indeterminable, the original cost of construction less depreciation, reproduction cost with allowance for depreciation, purchase price, and capacity to earn money for its owner may be considered.

Assessors should consider a fixed asset to be fairly constant in value and it should be gauged by conditions over a period of time.

**1954 (Sears, Roebuck & Co. v. Presque Isle).** The opinion and judgment of assessors controls the value of property for taxation purposes, unless it is so unreasonable under the circumstances that property is substantially overvalued and injustice results, or there is unjust discrimination, or the assessment was fraudulent, dishonest, or illegal. Neither the statute nor the constitution expects that a board of assessors could make an assessment with all values so exact that no expert could disagree with their judgment.

**1966 (Kittery Electric Light Co. v. Kittery).** Perfection is not expected, and if assessors have been honest with themselves, fair with the public, and true to their oath of office in their endeavor to reach just values, their judgment controls. Whenever it can be established indisputably by competent and sufficient evidence that an assessment against an aggrieved taxpayer's property is higher than assessments upon the property of taxpayers in general, and that such discrimination was intentional, the court will reduce the tax to the extent necessary to place the overvalued property upon a plane of equality with others in its class. To obtain relief under the constructive fraud doctrine, an aggrieved taxpayer must show more than a few instances of lower valuation being placed on other taxable property than was given to his or her property. A taxpayer must show that greater valuation was placed on his or her property than was put on the general mass of taxable property. Where it is impossible to secure the standards of true value, uniformity and equality required by law, equality is most important.

**1966 (Maine Consolidated Power Co. v. Farmington).** The just value of utility property for tax purposes must be ascertained from consideration of all factors. Assessors are not limited to the utilities earning capacity; other relevant considerations are to be weighed in arriving at just value.

**1979 (Farrelly v. Deer Isle).** The use of unfair or partial judgment, which results in the imposition of an unequal burden on property having the same just value, will invalidate an assessment. An assessment system which has a necessary potential for unequal apportionment of tax burden, producing arbitrary assessments, could not be sustained even if certain of the assessments approximated just value.

**1981 (Shawmut Inn v. Kennebunkport).** The just value of taxable property is the equivalent of market value. A recent public sale of property is evidence of market value for tax purposes, but the weight given to the sale price depends on the ability to show that it is indicative of the price a willing buyer would pay in a free and open market. An appraisal methodology was not inherently discriminatory where the recommended valuations of an appraisal firm, which valued a property on the basis of reproduction cost less depreciation, were checked against the assessors' independent knowledge of the town's property values and reductions in valuation were granted where the appraisal was found to be excessive. There is a presumption of good faith and conformity to the requirements of law attached to assessors' work, and to overcome such presumption a taxpayer must show that the judgment of the assessor as to the tax amount is irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and injustice results. Local assessors must keep themselves informed as to the methods used by the professionals they hire and assessors must use their own knowledge of local conditions to check on the accuracy of the professional appraiser's recommendations.

**1989 (Moser v. Phippsburg).** Assessors are not precluded from making adjustments designed to maintain equal distribution of the tax burden in the time period between town-wide revaluations. The mere potential for unequal apportionment of tax is not sufficient to overturn an assessment. The taxpayer must show that the assessor's system of valuation necessarily results in

unequal apportionment unless they intend to prove directly that their property is substantially overvalued.

## **Municipal Appeals**

Municipalities may establish boards of assessment review. A board of assessment review is established by a town's legislative body at least 90 days before the annual meeting. The board is composed of three members and two alternates appointed by the municipal officers. Towns may by ordinance provide for a board of assessment review to be comprised of five to seven members and up to three alternates (30-A M.R.S. § 2526(6)(D)). A city may establish a board pursuant to 30-A M.R.S. § 2552(2).

Where a municipality has adopted a board of assessment review, a taxpayer may appeal a decision of the assessors or municipal officers to deny a requested abatement. A taxpayer may apply in writing to the local board of assessment review within 60 days after notice of the denial or after the application for abatement is deemed to have been denied.

Either party may appeal from the decision of the board of assessment review directly to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure (Appendix D). If the local board fails to give written notice of its decision within 60 days of the date the application is filed, unless the taxpayer agrees in writing to an extension, the application is deemed denied and the taxpayer may appeal to the Superior Court as if there had been a written denial.

**Nonresidential property exceeding \$1,000,000.** Either party may appeal the decision of the local board of assessment review to the State Board of Property Tax Review with regard to nonresidential property with an equalized municipal valuation of at least \$1,000,000. This appeal must be within 60 days after notice of the decision by the board of assessment review or after the application is deemed denied. The State Board of Property Tax Review reviews the appeal and may grant an abatement as it thinks proper (36 M.R.S. § 843(1-A)).

**Primary Assessing Area Appeals.** If a primary assessing area has adopted a board of assessment review and the chief assessor, municipal officers, or the State Tax Assessor denies a requested abatement, the taxpayer may apply in writing to the board of assessment review within 60 days after notification of the decision or after the application is deemed denied. If the board thinks the applicant is overassessed, the taxpayer is granted an abatement as the board thinks proper. (36 M.R.S. § 843(2)).

## **County Commissioner Appeals**

Appeals from the decisions of assessors or municipal officers who deny an abatement request in a municipality that is not a primary assessing area, or that has not adopted a local board of assessment review may be taken to the county commissioners. applicant taxpayer may appeal to the county commissioners within 60 days after notice of the decision or deemed denial. Either party may appeal the decision of the county commissioners to Superior Court in accordance with Rule 80B. If the county commissioners fail to give written notice of their decision within 60 days of the date the appeal was filed, the appeal is deemed denied and the taxpayer may appeal to Superior Court as if there had been a written denial. (36 M.R.S. § 844(1)). A taxpayer may agree, in writing, to an extension of the time for a decision by the county commissioners.

The courts have held that the county commissioners, on appeal from a denial of abatement, must independently determine just value. In Quoddy Realty Corp. v. Eastport, the court stated that “

. . .they ignored their responsibility to determine just value . . .". The law court in this case remanded this case for proper adjudication under its opinion.

An owner of nonresidential property with equalized municipal valuation of at least \$1,000,000 may appeal to the State Board of Property Tax Review rather than to the county commissioners (36 M.R.S. § 844(2)).

It has been held that when county commissioners grant an abatement, but either had no jurisdiction because of a defective petition or granted relief to an applicant legally prevented from an appeal because of failure to answer the proper inquiries of the assessors, the court may require the commissioners' records to be submitted to the court for review (Levant v. Penobscot County Commissioners).

36 M.R.S. § 553 provides that real estate taxes may be assessed either to an owner or to a non-owner who is in possession. The county commissioners must not refuse a petition for a hearing on a denied abatement request from a person who does not own the real estate, if that person is being taxed on that real estate. The person being taxed may be aggrieved by an incorrect assessment (Seaborne v. Look).

## **State Board of Property Tax Review**

The State Board of Property Tax Review, as established by 5 M.R.S. § 12004(2), consists of 15 members appointed by the governor. The board has authority to hear and determine appeals from certain decisions of the local assessor, municipal officers, the local board of assessment review, or the county commissioners.

The board has jurisdiction over appeals from assessors' decisions on property in the Tree Growth Tax Law program and the Farm and Open Space Law program. In primary assessing areas, the board serves as municipal officers in hearing appeals from the denial of abatement for poverty or infirmity. The board is also authorized to decide municipal appeals of the Property Tax Division's equalized valuation or determination of assessing standards (36 M.R.S. § 271).

When a taxpayer appeals to the State Board of Property Tax Review, because either the local board of assessment review or the county commissioners fail to make a decision, the costs of the state board in deciding the appeal are charged to the municipality or county failing to make the decision (36 M.R.S. § 850).

## **Court Appeals**

Appeals from the decisions of local boards of assessment review, the State Board of Property Tax Review, or the county commissioners may be taken to the Superior Court with local jurisdiction. Appeals must generally be filed within 30 days after the notice of decision, or within 30 days after the application for abatement is deemed denied. The proper parties to an appeal to the courts are generally the municipality and the taxpayer. Tax assessors are improper parties in tax abatement proceedings and have no right to appeal the decisions of county commissioners to Superior Court (Sebago v. Drummond). However, where the abatement action involves entitlement to exemption, the assessors are retained as a necessary party to enable the court to order a granting of exemption, if justified, since only the assessors may grant an exemption (Connecticut Bank & Trust Co. v. Westbrook).

On initial appeal to a reviewing board, the assessors' decision as to the situs of property, its taxability and the assessed value is presumed to be correct until the contrary is shown. The taxpayer has the burden of proving his or her grievance. On appeal from the findings of the boards of assessment review or county commissioners, the court reviews only questions that these review agencies were authorized by statute to hear. The court does not become an independent tribunal, although it may properly make independent inquiry into the taxpayer's claims of overvaluation by considering the testimony of witnesses and the correlation of several approaches in arriving at just value (Harwood v. Southwest Harbor). The court may determine whether the review decision is unreasonable or unlawful, but it is generally limited to a consideration of questions of laws, and may not review questions of fact. On reviewing a tax abatement denial by county commissioners, for example, the court's role was to determine whether the negative conclusion was supported by substantial evidence on the record as a whole. The standard is whether the record contains such relevant evidence as a reasonable person might accept as adequate to support that conclusion (P. H. Chadbourne v. Bethel).

The court does not correct errors or inadvertences with respect to valuation and it will not interfere with the opinion of assessors in determining value of property unless such errors or inadvertencies violate the uniformity of taxation requirement. The court will interfere with an assessment only where there is evident a systematic purpose on the part of the taxing board to cast a disproportionate share of the public burden on one taxpayer, or on a class of taxpayers (Sweet v. Auburn).

When the conclusions of assessors on property value are not honestly arrived at or produce an inequitable result, the court will intervene (Kittery Electric Light Co. v. Kittery). The authority of the court can be invoked when assessed value can be shown to be illegal, fraudulent, malicious, or determined in such an arbitrarily and capricious manner as amounts to constructive fraud. Fraud in the assessment of property must be proved by sufficient evidence. The mere fact of overvaluation will not, in itself, establish fraud and warrant judicial interference with the assessment. To justify a finding of fraud, there must be demonstrated a conscious failure on the part of the assessors to exercise the fair and impartial judgment which the law and their oath of office demands of them. A valuation that is so manifestly excessive as to indicate that the assessor could not have been honest in the property's valuation can be considered fraudulent. Likewise, any excessive valuation of property, knowingly and intentionally made by an assessor, in violation of the constitutional uniformity requirement (Article IX, section 8), will be construed as constructive fraud subjecting the assessment to judicial review without proof of actual fraud.



# CHAPTER 12

## MISCELLANEOUS PROVISIONS

### Special Assessments

**Generally.** A special assessment is a charge for a specific cost to a municipality caused by a taxpayer. A special assessment is added to a taxpayer's property tax bill and is treated as part of the tax. It is neither unjust nor inequitable to require that a landowner contribute towards the cost of a public project an amount equal to the increased value of his or her property (Auburn v. Paul).

Special assessments, if imposed, must be assessed on all similarly situated property and the assessment cannot exceed the private benefits received. Otherwise, the guarantees of due process and equal protection would be denied.

**Damaged schoolbooks or appliances.** If a public school student loses or destroys school property and the student's parent, after notification, does not reimburse the school for the lost or damaged property, the school board will report to the municipal assessors, who will include the value of the property in the next municipal tax assessed against the delinquent parent. The special assessment is collected as if it were a tax (20-A M.R.S. § 6807).

**Nuisance assessments.** When municipal officers are forced to remove or fix a dangerous building, the expenses incurred must be repaid within 30 days by the owner of the building or the assessors may assess the expense as a nuisance assessment against the land on which the building was located. This amount is included in the next annual warrant to the collector and is collected as if it were a tax against the real estate (17 M.R.S. § 2853).

The municipal officers may serve an owner of property with a malfunctioning wastewater disposal system, including septic tanks, cesspools, cisterns, dry wells, sewer lines and pipes, an order to remedy the problem. If the nuisance is not remedied within 10 days, the municipal officers may correct the malfunction. The reasonable expenses of the municipality may be recovered through a civil action against the owner, or the amount shall be assessed against the land on which the wastewater disposal unit is located and it is included in the next annual warrant to the collector to be collected as a property tax (30-A M.R.S. § 3428). Interest, as determined by the municipality pursuant to 36 M.R.S. § 505, in the year in which the special tax is assessed, accrues on any unpaid balance on the 60th day after the commitment of the special tax to the collector.

**Street improvement assessments.** Reimbursement to owners of land taken by a municipality to create or alter a street may be recaptured from the lots adjacent to and bounded by the improved street through special assessments on those lots in proportion to the increased benefit or value.

The aggregate assessment cannot exceed the reimbursement for the land taken. These assessments are certified by the municipal officers and filed with the collector. If the assessment remains unpaid within 30 days of written notice, a special tax in the amount of the assessment may be imposed on the land and buildings and it is included in the next annual warrant to the collector and is collected as if it were a municipal property tax (23 M.R.S. §§ 3601 - 3607).

**Sewer assessments.** All assessments and charges authorized for sewer projects are certified by the municipal officers and filed with the tax collector for collection. If the assessment remains unpaid after 30 days from written notice, then a special tax in the amount of the assessment may be imposed against the person's land and it is included in the next annual warrant to the collector to be collected as a property tax. This assessment is authorized by a certification from the collector to the assessors (30-A M.R.S. § 3444).

Although the statutes are specific that special tax assessments are to be collected in the same manner as county and municipal taxes, the statutes are silent as to how these special taxes should be included in the tax collector's warrant. Maine Municipal Association suggests that special taxes be included after the overlay and before the total amount committed to the collector so that they will not interfere with the regular commitment. This application will ensure that the special tax is not used in computing the overlay, thereby avoiding jeopardizing the legality of the entire assessment by exceeding the limitations of the amount of overlay.

## **Municipal Development Districts**

**Municipal development assessments.** The governing body of a municipality may designate development districts that will be dedicated to provide employment opportunities, broadening the tax base and generally improving the local economy. To meet the costs and financing obligations associated with this type of development, the municipality may issue development, maintenance and implementation assessments against lots or property within the development district (30-A M.R.S. § 5255).

**Tax increment financing district.** A tax increment financing district is a type of development district, or a part of such district, which utilizes tax increment financing to finance the development program. After formation of a tax increment financing district, the assessor certifies the original assessed value of the taxable real property in the district. Each year thereafter the assessor certifies the change in assessed value from the original value (30-A M.R.S. § 5227). This difference, if positive, is called the captured assessed value and that portion of all real and personal property taxes assessed by the municipality, in excess of any state, county or special district tax, upon the captured assessed value of property in the district is called the "tax increment." The municipality may retain all or part of the tax increment for the purpose of financing the development program (30-A M.R.S. § 5227).

## **Tax Base Sharing**

To provide an incentive for coordinated, multi-community economic development projects, 30-A M.R.S. § 5752 allows communities to share their tax bases. Municipalities may vote to enter into a tax base sharing agreement for all or a specific portion of the commercial, industrial, or residential assessed valuation located within their respective boundaries. The shared valuation is assessed in the municipality in which the property is located at the municipal tax rate. The collected taxes are remitted within 15 days to the other municipality(ies) on the basis of the terms of the agreement.

## **Property Tax Relief**

Property tax has been the major source of revenue to local government since colonial days. Because of the difficulties of locating and valuing all items of personal wealth in contemporary

society, the property tax has evolved from a general property tax to a limited property tax. The tax is now viewed as a less reliable measure of a person's ability to contribute to the costs of local government than it was during earlier agrarian-based society. Measures to address the burdens placed on property taxpayers generally fall into the following categories: (1) sharing state revenue sources with municipalities; (2) reducing local expenditures; (3) expanding the local tax base and taxing authority; and (4) providing targeted property tax relief on an individual basis.

**State-municipal revenue sharing.** This revenue sharing program is intended to stabilize the municipal property tax burden by sharing the broad-based taxes of state government. Each month a portion of the state's sales and income tax revenue is distributed to municipalities according to a formula which measures the comparative tax burden of each municipality based upon its population and its equalized full value tax rate (30-A M.R.S. § 5681).

**Reimbursements for tax exemptions.** Maine's Constitution, Art. IV, Part Third, Section 23 requires reimbursement of at least 50% of the property tax revenue loss suffered by a municipality as a result of statutory property tax exemptions or credits enacted after April 1, 1978. , Current law limits the state reimbursement to 50% of the revenue loss for the following exemptions created or expanded since 1978: homestead, veterans, veterans' organizations and animal waste facilities. Business equipment exempt under the BETE program is also reimburse at 50%, however a municipality may apply for a greater percentage reimbursement when more than 5% of the municipal tax base consists of personal property (taxable or exempt) or if BETE qualified equipment is located in a TIF created before April 1, 2008 and the municipality would have otherwise retained the property tax that would have been assessed against that qualified property for its own TIF expenditures. Beginning tax year 2017, the homestead exemption will be reimbursed at 62.5%. Claims for revenue loss must be filed by November 1 or within 30 days from the date of commitment, whichever occurs later on a form prescribed by the State Tax Assessor. This constitutionally required reimbursement in recognition of a loss of local base is due municipalities regardless of whether a municipality's assessors had assessed all property liable to taxation *in the year preceding enactment of a new property tax exemption or credit* (Opinion of the Attorney General April 7, 1981).

Any municipality granting exemptions against the otherwise taxable estates of veterans according to 36 M.R.S. § 653 may file a claim against the state to recover 90% of the taxes lost because of these exemptions in excess of 3% of the total tax levy (36 M.R.S. § 653(1-H)). Claims are filed on forms prescribed by the State Tax Assessor.

The state excise tax on mining property in lieu of the property tax on such property also compensates municipalities for the loss of tax base by reimbursing them with 50% of the property tax revenue loss as a result of the exemptions created (36 M.R.S. § 2861).

**Tree Growth Tax Law program reimbursement.** The state reimburses municipalities for 90% of the per acre tax revenue lost as a result of the current use valuations required by the Tree Growth Tax Law so long as the municipality achieves the minimum assessment ratio (36 M.R.S. § 327), and files a timely municipal valuation return (36 M.R.S. § 383).

The tax loss is measured as the difference between the tax that would have been assessed, but for Tree Growth Tax Law valuations, according to the undeveloped acreage valuations used in the state valuation then in effect, or according to the current local valuation on undeveloped acreage, whichever is less, and the tax actually assessed on the land using Tree Growth Tax Law valuations. No municipality can receive reimbursement that would exceed an amount determined by calculating the Tree Growth Tax loss less the municipal savings in educational costs attributable to the reduced state valuation resulting from Tree Growth Tax Law valuations. The municipal savings in educational costs is computed by multiplying the school subsidy index by the change in state valuation due to the difference between the current use valuations of the Tree Growth Tax Law and

the undeveloped acreage valuations used in the statewide valuation then in effect (36 M.R.S. § 578(1)).

**Service charges.** Although the statutory framework for municipally-imposed service charges is in place, the only class of exempt property currently subject to this source of revenue is residential properties exempt from taxation yet used to provide rental income, except for parsonages and student housing (36 M.R.S. §508). The general framework follows:

Municipal legislative bodies may elect those exempt institutions and organizations on which service charges are to be levied. The charges must be calculated according to the actual cost of providing municipal services to the exempt real property and to the persons who use the property. Services include: fire protection, police protection, road maintenance, traffic control, snow and ice removal, water and sewer service, sanitation service and any other services other than education and welfare. The municipality cannot be selective within a classification voted for service charges.

The service charge levied against an exempt institution or organization cannot exceed 2% of its annual gross revenue. Upon satisfactory proof of a claim for this limitation to apply, the municipal officers must abate the charge in excess of 2% of the gross annual revenue for the year immediately prior to the year for which the service charge was levied (36 M.R.S. § 652(1)(L)(6)).

The Attorney General has opined that service charges are not taxes and are therefore not subject to the uniform assessment and apportionment provisions of Art. IX, Section 8 of the Maine Constitution provided that such charges are calculated and imposed in strict conformity with the statute (Opinion of the Attorney General, April 23, 1979). Unlike a tax, a service charge is an assessment of benefits since the charge reasonably reflects the value of the service or convenience furnished. However, certain guidelines must be adhered to. There must be a benefit received by the person paying the charge; the charge must be imposed on all similarly situated users; and the charge must reasonably reflect the value of the benefit.

**Property Tax Fairness Credit.** This program provides targeted property tax relief to Maine residents who own or rent a homestead. Application is made annually on the resident's Maine income tax return. (36 M.R.S. § 5219-II).

**Municipal Property Tax Assistance.** A municipality, by ordinance may adopt a program to provide benefits to residents of the municipality. The municipality may restrict the benefits to taxpayers 62 years old or older. If adopted, a program must offer a higher benefit to taxpayers with lower income compared to taxes assessed and must include renters as well as owners. Benefits can only be given to a person with a homestead in the municipality. (36 M.R.S. §§ 6231 – 6233).

**Municipal Property Tax Deferral for Senior Citizens.** This program allows a municipality, through ordinance, to allow certain elderly taxpayers to defer property taxes on their primary residences. To qualify, a person must be at least 70 years old and must have lived in his or her home for at least ten years. Further, the household income may not exceed 300% of the federal poverty level. Taxes deferred under this program must be repaid if the taxpayer dies, moves, or if the home is no longer the taxpayer's primary residence. If the deferral is on a mobile home, deferred taxes must be repaid if the home is moved out of the state. (36 M.R.S. § 6271).

**Property Tax Relief Fund.** A Property Tax Relief Fund is established for the purpose of distributing unanticipated surplus revenues in the State's General Fund to municipalities experiencing population growth and increased infrastructure needs. The fund cannot exceed \$25,000,000. Money is distributed annually to municipalities on the basis of relative population. Funds may be expended for the following purposes: (1) capital construction and improvements, land acquisition, capital equipment acquisitions or other nonrecurring purposes, (2) purposes for which

bonds have been previously authorized, but not yet issued, to limit indebtedness, (3) for the local share of state, federal or privately financed capital construction and improvement projects. (30-A M.R.S. § 5683).

**Mandate reimbursement:** Article IX Section 21 of Maine's requires the State to annually provide 90% of the funding when the State requires a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues. The Legislature may override the payment of a mandate upon the vote of 2/3 of all members elected to each House.



# APPENDIX A

The following is an alphabetic listing of citations for judicial decisions referenced in the body of the text. Those citations noted with an asterisk are summarized following this listing. The synopses are provided to allow the reader to more fully appreciate the judiciary's role in interpreting the law.

Case	Citation	Page
Acheson v. Johnson (1952) .....	86 A.2d 628 .....	10
Allen v. Archer (1860) .....	49 Me. 346 .....	25
Alpha Rho Zeta v. Waterville (1984) .....	477 A.2d 1131 .....	68
Athens v. Whittier (1922) .....	118 A. 897 .....	75, 76
Auburn v. Mandarelli (1974) .....	320 A.2d 22 .....	18, 81
Auburn v. Paul (1892) .....	24 A. 817 .....	89
Augusta v. Allen (1981) .....	438 A.2d 472 .....	46, 47
Augusta Water District v. Readfield (1976) .....	349 A.2d 768 .....	52
Baker v. Webber (1907) .....	67 A. 144 .....	30
Baxter v. Waterville Sewerage District (1951) .....	79 A.2d 585 .....	16
Blaney v. Shapleigh (1983) .....	455 A.2d 1381 .....	12
Boothbay v. Race (1878) .....	68 Me. 351 .....	21, 33, 124
Brewer Brick Co. v. Brewer (1873) .....	62 Me. 62 .....	16
Bristol v. Eldridge (1978) .....	392 A.2d 37 .....	25, 63
Brownville v. U.S. Pegwood and Shank Co. (1924) .....	123 A. 170 .....	24
Bucksport v. Swazey (1933) .....	165 A. 164 .....	42
Bucksport v. Woodman (1877) .....	68 Me. 33 .....	27
Camden v. Camden Village Corp. (1885) .....	1 A. 689 .....	64
Canning v. State Dept. of Transportation (1975) .....	347 A.2d 605 .....	11
Champion International Corp. v. Bucksport (1995) .....	667 A.2d 1376 .....	28
Christian Schools v. Rockport (1985) .....	489 A.2d 513 .....	66
Clark v. Gray (1915) .....	94 A. 881 .....	36
Collins v. State (1965) .....	213 A.2d 835 .....	77
Common Cause v. State (1983) .....	455 A.2d 1 .....	19
Connecticut Bank & Trust Co. v. Westbrook (1984) .....	477 A.2d 269 .....	72, 86
Cressey v. Parks (1883) .....	75 Me. 387 .....	45
Cumberland County Power and Light Co. v. Hiram (1926) .....	131 A. 594 .....	27, 83
Davis v. Ellsworth (1971) .....	281 A.2d 138 .....	45
Dead River Co. v. Houlton (1953) .....	103 A.2d 123 .....	29, 57
Delogu v. State (1998) .....	720 A.2d 1153 .....	19
Delta Chemicals v. Searsport (1981) .....	438 A.2d 483 .....	78
Dillon v. Johnson (1974) .....	322 A.2d 332 .....	3, 4, 37
Dresden v. Bridge (1897) .....	38 A. 545 .....	75
Dresden v. Goud (1883) .....	75 Me. 298 .....	22, 24
Eastler v. State Tax Assessor (1985) .....	499 A.2d 921 .....	16
Egery v. Woodard (1868) .....	56 Me. 45 .....	28, 43
Farrelly v. Deer Isle (1979) .....	407 A.2d 302 .....	28, 84, 118
Ferry Beach Park Assn. v. Saco (1939) .....	7 A.2d 428 .....	68
Fickett v. Hohlfeld (1978) .....	390 A.2d 469 .....	46, 47
Finance Authority of Maine v. Caribou (1997) .....	694 A.2d 913 .....	41
Foxcroft v. Straw (1893) .....	29 A. 950 .....	41
Frank v. Skowhegan (1974) .....	329 A.2d 167 .....	24, 27
Frankfort v. Waldo Lumber Co. (1929) .....	145 A. 241 .....	77
Freeport Minerals Co. v. Bucksport (1981) .....	437 A.2d 642 .....	80
Georgetown v. Reid (1934) .....	171 A. 907 .....	46

Gilpatrick v. Saco (1869) .....	57 Me. 277 .....	29
Gray v. Hutchins (1954) .....	104 A.2d 423 .....	43, 48
Greaves v. Houlton Water Co. (1943) .....	34 A.2d 693 .....	18, 64
Greene v. Lunt (1870) .....	58 Me. 518 .....	30
Greenville v. Blair (1908) .....	72 A. 177 .....	76
Harwood v. Southwest Harbor (1985) .....	489 A.2d 507 .....	87
Hathaway v. Addison (1860) .....	48 Me. 440 .....	23, 25, 26
Hobbs v. Clements (1850) .....	32 Me. 67 .....	41
Holbrook Island Sanctuary v. Brooksville (1965) .....	214 A.2d 660 .....	29, 66, 68
Howard v. Augusta (1882) .....	74 Me. 79 .....	59
Howard D. Johnson Co. v. King (1976) .....	351 A.2d 524 .....	64
Hurricane Island Outward Bound v. Vinalhaven (1977) .....	372 A.2d 1043 .....	68
Johnson v. Dedham (1985) .....	490 A.2d 1187 .....	45
Johnson v. Goodridge (1838) .....	15 Me. 29 .....	30
Kelley v. Jones (1913) .....	86 A. 252 .....	43
Kittery Electric Light Co. v. Kittery (1966) .....	219 A.2d 728 .....	17, 27, 83, 84, 87
Knight v. Thomas (1900) .....	45 A. 499 .....	76
Lambard v. Kennebec County Commissioners (1866) .....	53 Me. 505 .....	29, 80
Lambert v. Wentworth (1980) .....	423 A.2d 527 .....	12, 69, 105
Levant v. Penobscot County Commissioners (1877) .....	67 Me. 429 .....	79, 86
Lewis v. Robbins (1954) .....	104 A.2d 838 .....	12
Lewiston v. All Maine Fair Assn. (1941) .....	21 A.2d 625 .....	68
Lewiston v. Marcotte Congregate Housing (1996) .....	673 A.2d 209 .....	65, 66
Lewiston v. Tri-State Rubbish (1996) .....	671 A.2d 955 .....	57
Libby v. Portland (1909) .....	74 A. 805 .....	17
Macaro v. Windham (1983) .....	468 A.2d 604 .....	78
Machiasport v. Small (1885) .....	77 Me. 109 .....	21
Maine AFL-CIO Housing Development Corp. v. Madawaska (1987) .....	523 A.2d 581 .....	65
Maine Consolidated Power Co. v. Farmington (1966) .....	219 A.2d 748 .....	27, 84
Maine Lumber Co. v. Mechanic Falls (1961) .....	172 A.2d 638 .....	28, 29
Maine Medical Center v. Lucci (1974) .....	317 A.2d 1 .....	66
Maine State Housing Authority v. Depositors Trust Co. (1971) .....	278 A.2d 699 .....	19
McCarty v. Greenlawn Cemetery Assn. (1962) .....	185 A.2d 127 .....	46
Morris v. Goss (1951) .....	83 A.2d 556 .....	16
Moser v. Phippsburg (1989) .....	553 A.2d 1249 .....	15, 84
Mosher v. Robie (1834) .....	11 Me. 135 .....	26, 34
Murray v. Ryder (1921) .....	115 A. 256 .....	41
Nason v. Ricker (1873) .....	63 Me. 381 .....	45
Nature Conservancy of the Pine Tree State v. Bristol (1978) .....	385 A.2d 39 .....	66, 67
Norridgewock v. Walker (1880) .....	71 Me. 181 .....	30
Opinion of the Attorney General, April 10, 1978 .....	1978 Me. AG Lexis 139 .....	51
Opinion of the Attorney General, March 4, 1980 .....	80-58 .....	18
Opinion of the Attorney General, February 16, 1982 .....	82-11 .....	63
Opinion of the Justices (1945) .....	42 A.2d 47 .....	4, 14
Opinion of the Justices (1970) .....	261 A.2d 53 .....	9
Opinion of the Justices (1979) .....	402 A.2d 601 .....	77
Orland v. County Commissioners (1884) .....	76 Me. 460 .....	29
Orneville v. Palmer (1887) .....	10 A. 451 .....	25
Osteopathic Hospital of Maine v. Portland (1942) .....	26 A.2d 641 .....	68
Otisfield v. Scribner (1930) .....	151 A. 670 .....	21, 22
Owls Head v. Dodge (1956) .....	121 A.2d 347 .....	63, 65
P.H. Chadbourne v. Bethel (1982) .....	452 A.2d 400 .....	87

Patterson v. Creighton (1856) .....	42 Me. 367 .....	24, 25
Pearson v. Canney (1874) .....	64 Me. 188 .....	30
Penobscot Chemical Fibre Co. v. Bradley (1904) .....	59 A. 83 .....	83
Pentecostal Assembly of Bangor v. Maidlow (1980) .....	414 A.2d 891 .....	66
Perry v. Lincolnville (1950) .....	75 A.2d 851 .....	29, 48, 77
Portland Terminal Co. v. Hinds (1944) .....	39 A.2d 5 .....	42, 74
Quoddy Realty Corp. v. Eastport (1998) .....	704 A.2d 407 .....	85
Rockland v. Farnsworth (1913) .....	89 A. 65 .....	28
Rockland v. Ulmer (1892) .....	24 A. 949 .....	45, 46
Salvation Army v. Standish (1998) .....	709 A.2d 727 .....	65, 66
Sawyer v. Gilmore (1912) .....	83 A. 673 .....	17
Schwanda v. Bonney (1980) .....	418 A.2d 163 .....	12
Seaborne v. Look (1983) .....	464 A.2d 221 .....	86
Sears, Roebuck & Co. v. Presque Isle (1954) .....	107 A.2d 475 .....	27, 78, 84
Sebago v. Drummond (1979) .....	402 A.2d 469 .....	86
Shawmut Inn v. Kennebunkport (1981) .....	428 A.2d 384 .....	17, 84
Shawmut Manufacturing Co. v. Benton (1923) .....	122 A. 49 .....	25, 41, 79, 83
Silverman v. Alton (1982) .....	451 A.2d 103 .....	63
Snow v. Weeks (1885) .....	1 A. 243 .....	35
Solon v. Holway (1931) .....	157 A. 236 .....	70
Spear v. Bath (1925) .....	130 A. 507 .....	83
Springfield v. Butterfield (1903) .....	56 A. 581 .....	21
State v. Hamlin (1894) .....	30 A. 76 .....	15, 18
State v. Keith (1960) .....	166 A.2d 485 .....	19
State v. Rand (1976) .....	366 A.2d 183 .....	16
State v. Western Union (1882) .....	73 Me. 518 .....	16
Sweet v. Auburn (1935) .....	180 A. 803 .....	17, 83, 87, 108
Sweetsir v. Chandler (1903) .....	56 A. 584 .....	75
Thorndike v. Camden (1889) .....	19 A. 95 .....	63, 77
Topsham v. Purinton (1900) .....	47 A. 919 .....	30, 76
U.S.A. v. Arlington County (1964) .....	326 F.2d 929 .....	71
U.S.A. v. Chester County Board of Assessment (1968) .....	281 F. Supp. 1001 .....	71
Vigue v. Chapman (1941) .....	24 A.2d 241 .....	21
Weekley v. Scarborough (1996) .....	676 A. 2d 932 .....	78
Whiting v. Lubec (1922) .....	115 A. 896 .....	6
Williamsburg v. Lord (1863) .....	51 Me. 599 .....	22
Young v. Johnson (1965) .....	207 A.2d 392 .....	21, 27

## Summaries

**Acheson v. Johnson** (1952) 86 A.2d 628. The plaintiff appealed a decision of the State Tax Assessor declining to abate a sales tax assessment for coal used for "domestic purposes" at his hotel. The assessor ruled that the statutory exemption for fuel used for domestic purposes applied only to fuel used to heat the living quarters of guests who occupy for four consecutive months or longer. Justice Fellows wrote that the fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The language of the statute is "the vehicle best calculated to express the intention" but the court will "look at the object in view." The purpose of the legislature, if discernible from the statute, will prevail irrespective of any rule for strict construction against exemptions. The Legislature determines what property is taxed and what is free from tax. Words that have acquired judicial definition are construed in accordance therewith. The court went on to identify a broader judicial definition of "domestic purposes" than that adopted by the assessor and reiterated that an administrative officer has no more right to legislate than the courts. The court concluded that the exemption applied to all fuel used for heating rooms of guests as well as other portions of the hotel maintained for the use, comfort or convenience of its guests and employees.

**Allen v. Archer** (1860) 49 Me. 346. At the 1858 town meeting, the voters agreed to redistrict the school districts without approval of the municipal officers or school committee. The Legislature validated the redistricting of the town in 1859. However, the notices calling for the meetings of the town in 1857 and 1858 were defective because the record did not show that they were posted in conspicuous places as required by statute. The defendants, who were elected assessors at the 1858 town meeting, were bound to show the legality of the meeting at which they were elected; otherwise, they hold no official position. Because the defendants failed to show they were legally elected, they failed to show that the tax assessed the plaintiff was one they were required by law to assess. The plaintiff's yoke of oxen was seized by the collector when he refused to pay the tax assessed by the defendants. Although the time of the taking was disputed, the court ruled that it was immaterial, if it was within the statute of limitations. Nor was it material whether the defendants took the oxen by their own hands, or by the hands of the collector, acting under their warrant. Justice Rice ruled in favor of the plaintiff. Persons acting as assessors of a town, without having been legally elected as such, are personally liable for the acts of the collector to whom they have issued a warrant for the collection of taxes assessed by them.

**Alpha Rho Zeta v. Waterville** (1984) 477 A.2d 1131. The City of Waterville assessed tax on the property owned by fraternities at Colby College after many years of the property not being taxed. The plaintiff fraternities argued that taxing their property violated the U.S. and Maine Constitutions regarding equal treatment of similar entities. The fraternities argued that they were equal and similar to tax-exempt fraternal organizations in the community and entitled to an exemption under 36 M.R.S. § 652(1)(H), despite a specific denial of exemption under that paragraph. The plaintiffs further claimed entitlement to exemption as literary and scientific institutions under 36 M.R.S. § 652(1)(B), either as part of the college or as independent entities. The court held that the college fraternities were similar to other fraternities in the community in name only and did not qualify for exemption as fraternal organizations under 36 M.R.S. § 652(1)(H). The court also ruled that the fraternities, while closely related to the college, were not part of the college and not entitled to the exemption under 36 M.R.S. § 652(1)(B). Further, the fraternities were not independently qualified as literary and scientific institutions, even though some ancillary literary and scientific benefit may exist due to the fraternities' relationship with the college. The plaintiffs' argument that other states have interpreted exempt property of literary and scientific institutions to include college fraternities was not applicable to Maine and that Maine courts had previously determined that the two entities are separate under Maine law.

**Athens v. Whittier** (1922) 118 A. 897. Assessors with the Town of Athens initially considered the property of a veteran to be exempt. Subsequently, the assessors discovered the property was

subject to tax, so they issued a supplemental assessment. The taxpayer argued that: 1) Because the assessors, who were also the town selectmen, signed the supplemental assessment with “selectmen” printed after the names, rather than “assessors,” the supplemental assessment was invalid; and 2) Because the taxpayer’s property was included on the original list, a supplemental assessment was not allowed. The court ruled that the title “selectmen” rather than “assessors” was due to inadvertence and the assessment was valid. The court also held that, since the taxpayer’s property was added to the original list as property not taxed, that was equivalent to the property not being assessed and, therefore, omitted from the original list, which allowed for a supplemental assessment.

**Auburn v. Mandarelli** (1974) 320 A.2d 22. The City of Auburn foreclosed on defendant’s property for nonpayment of tax due and placed a lien on the property, subsequently taking possession of the property after the statutory 18-month lien period passed. The taxpayer claimed that: 1) The city violated procedural due process by not delivering the lien notice through personal service; and 2) The city violated substantive due process by taking without just compensation and received unjust enrichment because the value of the property seized far exceeded the outstanding debt. The taxpayer asked that the city reimburse him for the excess of selling price over tax due. The court ruled in favor of the city. The court found that the delivery of a lien notice through certified mail is sufficient to satisfy the law. The court also found that there was no constitutional violation of due process and that the law did not require the city to make payment to a taxpayer for excess revenue from foreclosure sales.

**Auburn v. Paul** (1892) 24 A. 817. The City of Auburn installed a sewer system and issued special assessments to affected taxpayers. The defendant argued that the special assessment was unconstitutional because it was in addition to taxes based on just value of his property and as such violated Article IX, § 8 of the Maine Constitution, which states “*All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.*” The court ruled that the special assessment was for a public utility which benefitted the taxpayer in particular and was apart from that enjoyed by the community. The court ruled that the assessment was legal and was not subject to the constitutional limitation under Article IX, § 8.

**Augusta v. Allen** (1981) 438 A.2d. 472. The City of Augusta and defendants both claimed title to a tract of unimproved land in Augusta. Defendant first attacked the statutory validity of the 1957 lien certificate (and therefore foreclosure) because although the certificate form had a space for the date of payment demand, it was left blank. Chief Justice McKusick ruled however that the tax foreclosure statutes only required a certified statement that proper demand for payment be made. The printed form, with space for inclusion of the notice date did not dictate a contrary conclusion; it simply provided opportunity for more than was required by the statute.

The second claim of the defendant was that the assessment was invalid. It was contended that treatment of the land as a single parcel, even though divided by a public road, violated the statutory requirement for separate tax valuation for each parcel of real estate. The court decided that the use of separate lot numbers on its tax map to identify land on opposite sides of a public road did not establish for tax assessment purposes, existence of two parcels rather than a single parcel where the subject property was of the same character and usage and was a single unbroken contiguous land area, but for the public road. The property had a single owner who had originally acquired the whole tract, and later conveyed it, by single metes and bounds description. Tax assessors have a reasonable degree of discretion in determining where individual parcels exist, and if the assessors have acted reasonably in the discharge of their statutory responsibility to place a separate assessment on each parcel of real estate, the assessment will be upheld.

**Augusta Water District v. Readfield** (1976) 349 A.2d 768. The taxpayer owned approximately 300 acres that included Carleton Pond, a water source for the municipality. The pond was fenced off and part of the parcel was in current use programs, but the municipality valued some of the land as developable lots. The taxpayer argued that the land, which was designated as a wildlife sanctuary by the municipality, should be included in the open space program. The court agreed with the taxpayer.

**Baker v. Webber** (1907) 67 A. 144. Baker claimed title to real estate in Grand Lake Stream by virtue of a quitclaim deed by D. Hall who acquired his interest by and from the Plantation, and to whom the land was sold by the tax collector for the nonpayment of taxes by the previous owners. The defendants claimed that the proceedings for the assessment and collection of the tax and for the sale of the land were flawed. First, they contended that no person was legally elected for 1897 as collector of taxes, the year of the assessment. The town merely “voted that the collection of taxes be given to the lowest bidder if he gives the required bond, otherwise to be given to the next lowest bidder.” Based on the record, however, the de facto collector was not the lowest bidder. There was no legal evidence therefore that the collector was properly elected and the collector's deed was determined to be a deed of a person assessing without right to act in that capacity. The taxpayer is entitled to have his interest protected in the sale of his property by the obligations imposed by the official oath. There was no record of the oath.

The transfer was also defective because there was no record of the assessment of the tax in question. There was no recorded list of assessments committed to the collector. When the forfeiture of land is sought for nonpayment of taxes, it must appear that there has been strict compliance with the essential provisions of the statute upon which the alleged tax title is founded. To prevent forfeiture, strict constructions are not unreasonable.

**Baxter v. Waterville Sewerage District** (1951) 79 A.2d 585. The Legislature passed a bill enacting the Waterville Sewerage District to take responsibility of enhancing and maintaining the city's sewer. The plaintiff taxpayers argued that the bill was unconstitutional on the grounds that: 1) Allowing the district to borrow violated the city's debt limit; 2) The district boundaries were the same as the city's boundaries; 3) The bill absolved the city from its legal duty of administering a function of the city and transferred that duty to the district; 4) The district commissioners would be appointed by the mayor rather than elected by city residents; 5) City functions should be financed through taxes instead of fees for services; and 6) The fees to be charged by the district violated the vested contractual rights in the current public sewer that the plaintiffs had with the city. The court ruled that: 1) The district is not a scheme to circumvent the city's debt limit; 2) The district and the city could both occupy the same boundaries because the two entities were created for different purposes; 3) Transferring the sewer administrative duties to the district was within the Legislature's authority; 4) The appointment of district commissioners does not affect the constitutionality of the bill; 5) Allowing for district fees is within the authority of the Legislature; and 6) The plaintiffs had no inflexible and absolute contract with the city for sewer services. The court ruled in favor of the defendant district.

**Blaney v. Shapleigh** (1983) 455 A.2d 1381. The town foreclosed on the plaintiff's property for nonpayment of property tax. Plaintiff argued that the town did not provide adequate notice of property tax lien as required by 36 M.R.S. § 942. The court found that the town had not given notice to one of the owners of record and that lack of notice voided the tax lien.

**Boothbay v. Race** (1878) 68 Me. 351. The taxpayer argued that, since the town did not send him a notice requesting a list of property, the subsequent tax assessment was invalid. The court ruled that the lack of notice did not invalidate the tax. The law requiring the town send notice is merely a directory law and does not, if neglected, void the tax.

**Brewer Brick Co. v. Brewer** (1873) 62 Me. 62. The plaintiff appealed to recover taxes paid under protest. The taxes having been assessed in 1872 against the manufacturing plant located in Brewer. At the 1870 Annual Town Meeting, defendant municipality voted to ". . . exempt from taxation for a term of ten years, manufacturing . . . establishments hereafter erected in town . . . together with such machinery . . . used for operating the same." Such contracts derived authority from a series of legislative acts in the late 1860's that permitted municipal discretion in granting property tax exemptions within stated limitations. In his opinion, Chief Justice Appleton ruled that municipalities cannot constitutionally be authorized to raise by taxation any money to be given away. The expenses for which assessments are to be made must be public. There is no authority to assess for merely private purposes; as to give away, or to loan to individuals. The court further held that "[to] have uniformity of taxation, the imposition of, and the exemption from taxation, must be by one and the same authority - that of the legislature." Consequently, the legislation in question was found to be unconstitutional and the vote of the municipality to be void.

**Bristol v. Eldridge** (1978) 392 A.2d 37. The Bristol assessors had granted an abatement to the defendants. But the defendants were dissatisfied with the amount and sought further abatement from the County Commissioners. The County Commissioners increased the abatement. The Bristol assessors attacked the decision of the County Commissioners in Superior Court arguing that Eldridge had not filed a list required by 36 MRSA § 706 and this precluded a County Commissioner-level appeal. They also argued that the Commissioners had acted arbitrarily and without basis in law. Superior Court found that by granting the initial abatement, the assessors had waived the list requirement and that the Commissioners were not barred from granting further abatement and held for the Eldridges. The Assessors then appealed under 36 MRSA § 844 to the Supreme Court, but Justice Wernick ruled that the Assessors were not a proper party to an action because it was the municipality which was the proper party. Assessors are public officials whose duties and authority are fixed by statute; they are not agents of the municipality for whose benefit they make tax assessments. The appeals were dismissed.

**Brownville v. U.S. Pegwood and Shank Co.** (1924) 123 A. 170. The defendant entered numerous exceptions based upon irregularities in the proceedings, and on a vote of the town to exempt from taxation the property taxed. Justice Merrill reaffirmed that when assessors have proper authority and jurisdiction which they do not exceed, minor irregularities in mere procedure, which do not increase the taxpayers share of the public burden, nor occasion him any other loss, will not prevent recovery of the tax in an action by the town. Objections relating to irregularities in the qualification of the tax collector and in the commitment of taxes to him are immaterial because the town, in this action, proceeded independently of the collector; the latter was not undertaking to execute his warrant. Finally, the court ruled that the town vote to exempt the defendant's property was beyond the power of the town. Neither did the town have power to abate the tax. Assessors are not subject to the control and direction of the municipality.

**Bucksport v. Swazey** (1933) 165 A. 164. The defendant was sued for 1931 taxes assessed upon his real estate and that of his deceased father. He argued that undervaluation of other taxable properties in town negated the tax. The defendant's real estate was listed for assessment in the record by parcels, each described generally as to character and location. The appraised value of each lot was recorded, but the tax was assessed on the aggregate valuation. The assessment against the deceased father was upon one parcel also listed by general description. This was not a case where the defendant's person or property is levied upon by direct warrant or where forfeiture could ensue, but was simply a proceeding for the collection of taxes by suit. In this form of action, it was not necessary that the assessment contain a particular description of the property, nor that separate valuations be made. The evidence of undervaluation of other properties was not admissible in this action. The defendant was liable for the tax, including the entire amount assessed against his father, since he was an heir of the estate and the assessors had not been notified of the division of real estate or of the names of other heirs or devisees. Because the record did not show a

fixed date for the payment of the taxes or that interest should be collected thereafter, no interest was allowed.

**Bucksport v. Woodman** (1877) 68 Me. 33. The taxpayer, as administrator of a deceased person's estate, was awarded an amount to be paid after April 1 and used to destroy two ships owned by the decedent. The town taxed this future amount as a debt due. The taxpayer argued that the award should not be taxed because of the nature of the payment and because the specific amount was unknown as of April 1. The court agreed with the taxpayer.

**Camden v. Camden Village Corp.** (1885) 1 A. 689. The Camden Village Corporation erected a building that was used by the local police and the corporation. When not used for municipal purposes, the large building rooms were rented for various entertainment activities. Money collected from the rentals was used to cover the operating expenses of the corporation. The Town of Camden claimed that the corporation's building was taxable, due to the rental activity. The corporation argued that it was an auxiliary of the government, the building was used for a public purpose and, therefore, was tax exempt. The court found in favor of the defendant corporation. The corporation was created by the Legislature as a public entity. The rental of unused space in the building was incidental to its primary use.

**Canning v. State Dept. of Transportation** (1975) 347 A.2d 605. This case doesn't deal directly with property tax, however it is important relative to statutory meaning and interpretation. The plaintiff was employed by the defendant. The plaintiff suffered an angina attack while shoveling at work and was temporarily hospitalized. The plaintiff was awarded workers' compensation for the time spent in the hospital. The plaintiff argues that he was permanently disabled by the incident and should receive ongoing compensation. The defendant argues that the hospitalization was a result of a preexisting condition, rather than an accident, and there should have been no compensation awarded. Prior to the incident, the Legislature had removed the phrase "by accident" from the section of workers' compensation law relating to qualification for hospital and rehabilitation payments, but the phrase remained in the section related to payment of compensation. The court interpreted the intent of the Legislature to be that the phrase "by accident" was to be removed everywhere in workers' compensation statute. The court also ruled that, after hospitalization, the plaintiff had been returned to the same condition as before the incident and, therefore was not permanently disabled by the work incident. The court rejected both arguments from plaintiff and defendant and ruled that the original compensation awarded was correct.

**Champion International Corp v. Bucksport.** (1995) 667 A.2d 1376. Because the town did not request from Champion a true and perfect list of all its estates not by law exempt from taxation, the taxpayer's rights to seek abatement was not affected by its failure to answer all of the proffered inquiries in the assessor's request for information to asset him in a revaluation of the mill. Champion's challenge to the assessor's request for information preceded the taxpayer's request for abatement and, therefore the taxpayer was not barred of their right to make application for abatement.

**Christian Schools v. Rockport** (1985) 489 A.2d 513. Christian Schools, Inc. (CSI) owned a 62 acre parcel of land in Rockport which, because of financial difficulties, did not open a school for academic year 1977. CSI remained a nonprofit Maine corporation and the property continued to be used to maintain records and transcripts of former students. The facilities were used by other schools with CSI's permission. The defendant, Rockport, argued that CSI had transferred such a significant usufructuary interest in the property to an insurance company under a financing agreement that the property lost its tax exempt status; moreover, it was argued that the reduced activity rendered the exemption as a literary institution unavailable. The insurance company had a right of first refusal on the purchase of the property, an option to purchase and an equity interest in the land. The parties had stipulated that CSI was a benevolent and charitable organization.

Justice Roberts wrote that the insurance company's interest was only contingent rights rather than ownership rights since CSI retained the full rights to determine the terms of transfer of the property should it elect to sell. The court found no basis to distinguish this finance arrangement from a standard mortgage arrangement. Although educational activities had ceased, regular access to records and use of the facilities by other schools, not for profit oriented purposes, was a use consistent with the purpose of CSI and exemption cannot be solely denied on the basis of a schools inability to operate at full capacity. The land continued to be used for a tax exempt purpose as long as any proceeds in excess of the cost of the financing were applied to the benevolent purposes of the institution.

**Clark v. Gray** (1915) 113 Me. 446. The defendant tax collector sent the plaintiff taxpayer a notice of tax due. Twelve days later, the collector arrested the taxpayer for nonpayment of the tax, claiming that the notice sent earlier was a demand for payment. The defendant argues that the law allows arrest 12 days after final demand for payment if the tax is unpaid. The plaintiff argues that the demand notice must be made in person, rather than a mailed bill. The court ruled that, while an in person notification may not be required, the notice that the collector did send was insufficient as a final demand and the subsequent arrest was illegal.

**Collins v. State** (1965) 213 A.2d 835. This case doesn't deal directly with property tax, but it is important relative to statutory meaning and interpretation. The plaintiff argued that state officials were given discretionary power and indirectly elected to waive that power. The case pivots on the interpretation of the term "may." The court ruled that when the rights of the public depend on the exercise of power by a government official, the term "may" should be interpreted to mean "must."

**Common Cause v. State of Maine** (1983) 455 A.2d 1. The defendants, State of Maine and Bath Iron Works ("BIW"), entered into an agreement where the state would contribute money to pay for developing a dry dock facility in Portland for BIW to use for ship repairs. Funding would be raised through a bond issue. The plaintiffs, Common Cause and others, argued that: 1) Public funds were being used for private, rather than public, purposes and this violated constitutional equal protection; 2) By issuing bonds, the state is lending the state's credit to a private company; and 3) The bond language was misleading. The court found, after extensive review of previous cases, that economic development is a public purpose. The court dismissed the claim of equal protection because the plaintiffs had no standing on the issue and took a position opposed to parties similar to BIW rather than in favor of them. The court stated that issuance of a bond does not constitute a loan of state credit. The court also ruled that the referendum language was not misleading. Decision in favor of the defendants.

**Connecticut Bank & Trust Co. v. Westbrook** (1984) 477 A.2d 269. The plaintiff taxpayer applied for an exemption for a pollution control facility it owned, under 36 M.R.S. § 656(1)(E)(2). The application was filed prior to April 1, 1982. The DEP initially denied the exemption in May. The plaintiff requested reconsideration. On reconsideration, the DEP allowed the exemption in August, 1982. The plaintiff requested abatement of taxes assessed on the pollution control facility on April 1, 1982, based on the exemption approval by DEP. The court ruled that taxability is based on the status of property as of April 1 of the property tax year. Since the exemption was not approved until August, the status of the pollution control facility on April 1, 1982 was taxable property and it was not exempt for property tax year 1982. The exemption was determined to have occurred on the date of certification by the DEP, rather than the date of application by the plaintiff.

**Cressey v. Parks** (1883) 75 Me. 387. The defendant tax collector for the Town of Glenburn seized hay from the plaintiff for nonpayment of taxes. The law said that property seized must be kept four days and then if the owner did not pay the tax due the property must be sold. The property was seized on Saturday, January 8 and sold on Friday, January 14. The plaintiff argued that the collector

held the property too long and the sale should be disallowed. The defendant argued that the property was required to be held for four full days, not counting the day of seizure, the day of sale and Sunday, so the sale on the 14<sup>th</sup> was required by law. The court ruled that the day of seizure should not be counted, but Sunday must be counted and the sale should occur on the fourth day after seizure, the 12<sup>th</sup>. The court found that the defendant defaulted, or failed to take required action, and awarded damages to the plaintiff.

**Cumberland County Power and Light Co. v. Hiram** (1926) 131 A. 594. The plaintiff taxpayer requested and abatement of taxes due to an overvaluation of their property. The property value was adjusted to just value and an abatement of associated taxes was granted. The plaintiff appealed the lower court decision, arguing that, although their land was now valued at 100% of fair market value, other property in the town was valued at 75% of market value. The court ruled that the valuation was reasonable and that there was no intent to differently value the plaintiff's property and other town property. In the absence of the intent to overvalue the plaintiff's property (or to undervalue all other property), the court ruled that a good faith effort on the part of the assessor must be presumed.

**Davis v. Ellsworth** (1971) 281 A.2d 138. The City of Ellsworth sent 12 lien notices to the plaintiff taxpayer, describing the property only by map, lot, book and page. The taxpayer argued that this description was insufficient and the lien was, therefore, invalid. The court ruled that the property description on the one randomly selected notice met the requirement of 36 M.R.S. §§ 942 and 943. The notice description was specific enough to accurately describe the property and the lien was valid.

**Dead River Co. v. Houlton** (1953) 103 A.2d 123. Plaintiff was a corporation residing in Bangor with a place of business in Houlton where it bought wood among other enterprises. The Houlton assessor was told by an officer of the plaintiff of certain personal property in Houlton consisting of pulpwood and ties. The plaintiff claimed this property to be in transit and therefore not taxable in Houlton. The taxpayer appealed the assessment on this property and argued that it was not the owner of the property. Justice Webber ruled that where one files a list or otherwise gives information to assessor upon inquiry, at least in the absence of fraud, mistake or accident, the taxpayer is estopped to subsequently deny its ownership or such other facts as the assessor(s) relied upon in making their assessment. Here the taxpayer disclosed ownership with no qualifications and the assessors must have the right to rely and act upon the disclosure. Where should the personal property be fixed? The court reasoned that pulpwood was not manufactured lumber and was not "employed in trade" or used "in the mechanic arts" in connection with any "store, storehouse, shop, mill, wharf, landing place or shipyard" in Houlton and therefore should be taxed by Bangor, that being the taxpayer's residence. The railroad ties were viewed as manufactured lumber and not being in the possession of a transportation company and in transit; therefore taxable in Houlton.

**Delogu v. State of Maine** (1998) 720 A.2d 1153. Bath Iron Works was offered a tax increment financing ("TIF") incentive that included a credit enhancement agreement, where part of the tax collected through the TIF district was returned to the taxpayer. The plaintiff claimed that the incentive program was: 1) Unconstitutional because it violated Article IV, Part 3, Section 1, which requires use of public funds for a public purpose; 2) Unconstitutional because the credit enhancement agreement violates the equal assessment requirement under Article IX, Section 8; and 3) Illegal because the TIF statute does not allow for a credit enhancement agreement.

Regarding the first argument, the court stated that it can only rule on whether the stated goal is a public purpose and whether the expenditure in question is not an unreasonable method for achieving that purpose. The court cannot determine the wisdom of a policy. Using this guideline, the court determined that the incentive offered did not violate the Constitution.

As to the constitutionality of the credit enhancement agreement, the court noted that, while taxes must be assessed equally, there is no such requirement regarding the distribution of tax revenue collected. Since the incentive consisted of a refund of a portion of taxes collected rather than a reduced assessment, the court ruled that there was no violation of the Constitution.

On the statutory argument, the court ruled that the law does allow for a credit enhancement agreement, even if not specifically stated.

**Delta Chemicals v. Searsport** (1981) 438 A.2d 483. The taxpayer appealed from an order of the Superior Court that affirmed a decision of a board of assessment review refusing to grant tax abatement. The plaintiff argued the method used by the assessors to value land had potential for unequal apportionment of the tax burden and that the 1979 assessed value of its land was in excess of just value. In 1970, Searsport contracted with an appraisal firm to appraise all land for tax assessment purposes. In 1975 these values were increased by 20% for all properties; in 1977 industrial properties were increased 80%, and in 1979 a 15% increase to all industrial property. For the 1977 and 1979 increases, the assessor took an average of all property sales in Searsport and applied the average to all industrial properties because there were no industrial property sales. Justice Violette wrote that local assessors are permitted considerable leeway in choosing a method to arrive at just value of property. The plaintiff had not sustained its burden of proof of proving that the method used had a potential for an unequal apportionment of tax burden and that its use resulted in an excess valuation. There was no evidence of unjust discrimination, or that the assessment was in some way fraudulent, dishonest or illegal. The court noted, however, that its decision was not indicative of approval of the method used and that the absence of industrial sales within the town does not relieve the assessor from employing professionally recognized methods in determining their just value.

**Dillon v. Johnson** (1974) 322 A.2d 332. The plaintiff brought an action against the State Tax Assessor and the Town of Sumner to challenge constitutionality of the 10 year durational residency requirement by which the defendant had been denied a property tax exemption as an otherwise qualified veteran. (This requirement was subsequently found to be unconstitutional in the case of Lambert v. Wentworth.) Justice Archibald held that the plaintiff's failure to include the municipal assessors in the action deprived the law court of jurisdiction to reach the constitutional issue, and ruled in favor of the defendant.

The court noted that the municipal assessors have certain responsibilities which are unique and distinct from other elected officials; their duties are defined by statute and, in the performance of their official duties, they are not subject to the direction and control of the municipalities in which they function.

**Dresden v. Bridge** (1897) 38 A. 545. Samuel Bridge an inhabitant of Dresden died November 6, 1893, testate. Edmund Bridge, the defendant, was named executor. In April 1894 the assessors judged the value of the Bridge estate at \$8,800 and the tax was paid. No list for the Bridge estate was filed after notice had been given by the assessors. In November 1894, the assessors made a supplemental assessment upon personal property of \$359,503.94 and committed to the collector, with a certificate that the estate was omitted from the April assessment by mistake. The tax was assessed to "Samuel J. Bridge, est. of." Justice Strout decided as follows on the two issues raised. First, that the assessors, knowing S. Bridge to be a man of large estate, had not omitted any item by mistake but had undervalued the gross amount of the estate and that their assessment was not authorized by law. The "omission" mentioned in the statute does not mean that an erroneous judgment of the value of an estate can be corrected by a supplemental assessment; and the assessors cannot afterwards increase their estimate of value of the property under the form of a supplemental assessment.

Secondly, the tax assessed to “Samuel J. Bridge, est. of” was not a legal assessment against the defendant. An executor is personally liable for a tax assessed against him, but the tax in this case cannot be viewed as assessed against the executor, rather to the estate of Samuel J. Bridge.

**Dresden v. Goud** (1883) 75 Me. 298. This was an action to recover a tax assessed against the defendant for the year 1881. Counsel for the defendant argued that the assessment was invalid because the assessors for that year were not sworn as such. Plaintiff's counsel answered that the record showed they were sworn as selectmen and, since the statutes provide that selectmen may act as assessors (36 MRSA § 703), the gentlemen were officers de facto, and as such, their acts were binding on the defendant.

Justice Danforth found a failure of evidence to show that either of the individuals had been duly sworn as assessors and ruled for the defendant for the following reason: the statute requires that the tax be legally assessed, and the proper oath is a condition precedent to the authority of the assessors to assess. No oath, no competency; no competency, there can be no legal assessment.

**Eastler v. State Tax Assessor** (1985) 499 A.2d 921. The plaintiff taxpayer challenged the Maine Forest Fire Suppression Act, arguing that the tax imposed on owners of more than 500 acres of land was a property tax rather than an excise tax. The tax was a flat per acre fee. The taxpayer argued that, because the tax was based on ownership of property and was not apportioned according to property value, the tax violated the Maine Constitution, Article IX, § 9. The State Tax Assessor argued that the tax was imposed on commercial forestry and, therefore, was an excise tax, not subject to the requirement of apportionment according to value. The court used a two-pronged test to determine whether the tax was a property tax or an excise tax.

First, the calculation of the tax was analyzed. Property taxes are normally determined by taking the total estimated budget and dividing that amount by the property value to determine the tax rate. The court determined that the tax in question resembled a property tax by first determining the estimated cost of fighting forest fires and then calculating the amount to be assessed to each land owner.

Second, the court looked at the subject of the tax. Property tax is assessed on the ownership of property, while excise tax is based on a particular use or a right other than ownership. The court found that the tax was assessed on the ownership of property and not on the act of commercial forestry. The court found in favor of the plaintiff taxpayer, calling the tax an unconstitutional property tax.

**Egery v. Woodard** (1868) 56 Me. 45. The plaintiff introduced a deed to himself, signed by the defendant and dated March 20, 1865. The plaintiff proved through another source that the deed was delivered and acknowledged on April 25, 1865. The defendant argued that the deed was backdated to cover the question of taxes based on the April 1 tax year. Chief Justice Appleton ruled that a deed, though duly executed while under the dominion of the grantor, and before its delivery, transfers no title. It takes effect by and from its delivery, not from its date. The defendant's deed was first effective after the land conveyed became liable for taxes assessed or to be assessed for the then current year and he was liable for the tax.

**Farrelly v. Deer Isle** (1979) 407 A.2d 302. The defendant argued that the plaintiff was barred from a right to abatement of real estate taxes because of a failure to file lists of their estates. Notice to file a list was posted at four locations in Deer Isle in late March, published in the Deer Isle newspaper and in the 1975 Annual Town Report, prepared prior to the 1976 town meeting. Plaintiffs contended that this was not "reasonable notice to the taxpayer," all of whom except one, were nonresidents. Plaintiffs did file lists with their application for abatement. Justice Pomeroy ruled that the lower court's decision should stand since he could not find it "Clearly erroneous" as required by the courts' Rule 52 and that the plaintiff was not barred from seeking abatement.

On a second front, the defendant argued that the taxpayers had not carried their burden of proving that their property was assessed in excess of its just value or that the assessor's judgment was irrational. The record established that the primary basis of the assessments was a formula that was used to arrive at the "just value" of the property. The formula used was \$10, \$15 and \$20 per foot for poor, fair and good shore frontage respectively. However, if the shore frontage was not known, the assessors valued property with shore frontage at \$400 per acre. The Chairman of the Board of Assessors also conceded that the formula was not always used if other circumstances were known. The court found that this practice could and usually would result in different valuations of two pieces of property of exactly the same size and location. An example of this variation was demonstrated with the plaintiff's property. The property had frontage of 430 feet. The assessor testified it was of \$15-20 per front foot quality, yielding a maximum value of \$8,600, yet the 65 acre property was valued at \$400 per acre or \$26,000 because the frontage was not known. The court found that the 1976 assessments were arrived at arbitrarily and could not be sustained. This is true even if one of the assessments in the case had approximated "just value." Where it is impossible to achieve both just value and uniformity and equality required by law, uniformity is to be preferred as the just and ultimate purpose of the law.

**Ferry Beach Park Assn. v. Saco** (1939) 7 A.2d 428. The plaintiff appealed a lower court decision to uphold a tax assessment, claiming they were entitled to an exemption as a benevolent and charitable association. The defendant city argued that the plaintiff operated as a business rather than as a benevolent and charitable association. The defendant further argues that the plaintiff is, at best, a religious entity and eligible for only the limited exemptions offered those groups. The court ruled that the plaintiff operated as a benevolent and charitable association was incorporated in Maine and the property was occupied for the organization's own purposes. Meeting the legal requirements, the plaintiff qualified for exemption.

**Fickett v. Hohlfeld** (1978) 390 A.2d 469. Plaintiff brought action to quiet title to land against Hohlfeld whose title derived from a tax deed from the town. Justice Godfrey held that the tax assessor had not acted contrary to law in treating an unimproved woodlot as one parcel even though the parcel consisted of separately described pieces. A minor inaccuracy in the boundary description did not flaw a sufficiently accurate description. Finally, he ruled that the valid tax lien certificates constituted prima facie evidence of regularity of all proceedings with reference to acquisition of title by tax lien mortgages and foreclosure and that in the absence of contrary evidence, the foreclosure requirements were satisfied. The purpose of the requirement for describing real estate on the assessment list is to allow landowner an opportunity to protest assessment on the parcel.

**Finance Authority of Maine v. Caribou** (1997) 694 A.2d 913. The Finance Authority of Maine ("FAME") purchased property in July. Taxes assessed on April 1 of that year were unpaid at the time of sale and the City of Caribou assessed the unpaid taxes to FAME and that organization argued that, because they were tax exempt, they did not owe taxes on the purchased property. The court ruled that the property became exempt in July, when FAME purchased it. Along with the property, FAME acquired the outstanding taxes that had been assessed prior to the date of exemption. The court ruled for the city and that the taxes must be paid, although, the property was exempt going forward.

**Foxcroft v. Straw** (1893) 29 A. 950. The town of Foxcroft assessed tax on property owned by the defendant. The defendant appealed the assessment on the grounds that his property was not taxable, since the land on which the property sat was owned by a tax exempt entity. The land, owned by a benevolent and charitable association, was permanently leased to the defendant. The defendant built a cottage on the leased land. The court ruled that the land under the cottage was not tax exempt because it was not occupied by the benevolent and charitable association for its own purposes. The defendant's property was, therefore, taxable.

**Frank v. Skowhegan** (1974) 329 A.2d 167. The plaintiff alleged over assessment on the grounds that the assessed valuation of a shopping center was based on the cost approach rather than the income approach, citing that lower than expected income effectively reduced the market value of the property. The plaintiff also argued that the assessors merely rubber-stamped the value estimate of a hired appraiser. The appeal was denied. In the opinion Justice Pomeroy cited the opinion in the case of Sweet v. Auburn which held that the true value of real estate should be viewed as fairly constant, and based upon measurably stable conditions over a period of time. Furthermore, considering the necessity for municipal economic stability, the court would not accept the implication that valuation of income producing property be annually determined by temporary fluctuations in the economy. On the latter point, the allegation that the assessors had abdicated their statutory duties was uncontroverted by the evidence that the assessors personally visited the property and all of the assessors were present when the appraiser presented his report for their approval and thoroughly explained his valuations to the assessors.

**Frankfort v. Waldo Lumber Co.** (1929) 145 A. 241. The plaintiff town assessed tax on defendant taxpayer. The taxpayer, through a third party, issued a promissory note for the tax and the town agreed that the note constituted payment in full. Unable to collect the note amount, the town began collection action against the taxpayer. The taxpayer argued that the tax assessment was settled and the town could not pursue action against them. The court ruled that the town had no authority to accept a note in lieu of payment and, therefore, had no right to discharge the tax liability for the defendant. Judgment for the plaintiff town meant the taxpayer must pay the tax due.

**Freeport Minerals Co. v. Bucksport** (1981) 437 A.2d 642. The defendant town assessed tax on the plaintiff business taxpayer based on the April 1 value of property. The taxpayer sold the business in May. The town sent the taxpayer a tax bill in July. The taxpayer requested an abatement of tax. The Board of Assessors denied the abatement and the new business owner then appealed the denial. The lower court dismissed the case because the taxpayer had not appealed within the allowable time. The taxpayer argued that the legal procedure had been followed. The Supreme Court ruled that the new business owner had a right to appeal as a proper party in this case. The court remanded the case to the Superior Court for a ruling on the abatement appeal based on this opinion.

**Georgetown v. Reid** (1934) 171 A. 907. The defendant taxpayer argued that a tax assessment against him was illegal because the town: 1) insufficiently described the property; 2) the taxpayer was not the owner of all lots included in the assessment; and 3) the naming convention used on the tax bill was inaccurate. The court found that: 1) a description of the property was not necessary in this case; 2) the fact that the taxpayer may not own some of the lots assessed is an argument for over-valuation, not of illegal assessment as argued; and 3) the naming convention, which the taxpayer had himself previously instituted as municipal assessor, was legal. The court found for the town, requiring defendant to pay the tax.

**Gilpatrick v. Saco** (1869) 57 Me. 277. The defendant municipality assessed tax on the plaintiff taxpayer's property, including an additional value added to the taxpayer list of property. The taxpayer filed suit to recover the tax on the additional property value. The court ruled the case was a nonsuit by the plaintiff, since the only legal procedure for disputing an overassessment was to apply for an abatement with the municipality.

**Gray v. Hutchins** (1954) 104 A.2d 423. Gray claimed title to a parcel of land by quitclaim deed from the Town of Orland by virtue of tax liens. The defendant claims title to the same land as residuary devisee under the will of Bennett. The defendant claims the taxes were improperly assessed to the Bennett heirs and that the liens were defective because they did not sufficiently describe the property by not mentioning the buildings thereon. Justice Fellows ruled that the title of a devisee

dates from the date of a testator's death only after a will has been proved and allowed, and an assessment against decedent's heirs is valid when made prior to the proof and allowance of a will. On the second resume, the court ruled that although land must be valued separately from the buildings, reference to buildings is not demanded by the lien certificate statute. The defendant had therefore failed to meet her burden of proving better title than that of the plaintiff.

**Greaves v. Houlton Water Co.** (1943) 34 A.2d 693. The plaintiff, assessor for the Town of Hodgdon, assessed tax on the defendant for poles and transmission lines located in Hodgdon. The defendant claimed that it was part of the Town of Houlton and, therefore tax exempt as a public municipal corporation. The court ruled that, while the defendant was managed by the Town of Houlton, it was a separate entity and not part of the municipality. The defendant did operate as a municipal corporation within the borders of Houlton, but also operated as a private enterprise in the Town of Hodgdon. Based on the organization of the defendant (separate from the town) and the operation as a private enterprise in the neighboring Town of Hodgdon, the court ruled that the property of the defendant was taxable.

**Greene v. Lunt** (1870) 58 Me. 518. The plaintiff, assessor for Peru, acquired several parcels of the defendant through liens for nonpayment of taxes. The defendant argued that the parcels were improperly seized. The court ruled that the description of some of the parcels on the town's liens was inadequate for identifying the parcels and, therefore, those liens were nullified. Other liens were deemed sufficient and upheld by the court.

**Greenville v. Blair** (1908) 72 A. 177. The defendant taxpayer argued that the town of Greenville illegally assessed taxes because: 1) The collector of taxes was not elected by ballot; 2) The written collection notice sent to the defendant by the town did not include the signatures of the selectmen; and 3) The town intentionally neglected to assess another resident. The court ruled that the method of selection of the collector does not affect the assessment validity nor the obligation of the taxpayer to pay it. Regarding the selectmen signatures, the court said that the defendant provided no evidence and, in the absence of proof to the contrary, the assumption of compliance on the part of the selectmen must be made. The court further ruled that the failure to assess tax on another resident does not negate the tax owed by the defendant. The court sided with the plaintiff town.

**Harwood v. Southwest Harbor** (1985) 489 A.2d 507. The plaintiff taxpayer claimed that the town overassessed his property and, further, the lower court merely accepted the assessor's testimony rather than conduct an independent review. The court ruled that the plaintiff did not meet the burden of proof required to show an overvaluation by the municipal assessor. The court found that the lower court correctly addressed the issue and affirmed the lower court decision.

**Hathaway v. Addison** (1860) 48 Me. 440. The plaintiff taxpayer was assessed taxes on personal property in 1855 and 1856. The plaintiff argued that he was not a resident of the Town of Addison in either of those years and the tax assessed should be considered illegal. The defendant town argued that the plaintiff is not entitled to the elimination of these taxes unless he proves that the town officials were properly appointed and that the taxes paid for 1855 were paid under duress. The court ruled that the town improperly assessed and, for 1855, collected the tax. Because the entire tax was illegally assessed and, therefore, void, plaintiff did not have to prove improper procedure relating to the installation of officers and whether the 1855 payment was made under duress. The court voided the taxes and ordered repayment to the plaintiff.

**Hobbs v. Clements** (1850) 32 Me. 67. The plaintiff purchased property sold by the City of Bangor for nonpayment of tax. The defendant claimed that the tax collector didn't give proper notice of the delinquent taxes. The defendant was a resident when the tax was assessed, but moved out of state in the year of assessment. The defendant paid tax, but not all of it. The collector posted locally a notice of sale and subsequently sold the property to the plaintiff. The court ruled in favor of the

defendant, that the collector did not post sufficient notice, which should have included the amount of unpaid tax and the length of time the tax was due. Therefore, the sale was invalid.

**Holbrook Island Sanctuary v. Brooksville** (1965) 214 A.2d 660. At issue was whether the plaintiff's real estate that was used as a wildlife sanctuary is exempt from taxation as a "charitable" organization. If the property was exempt, there was no necessity of filing a list or of paying tax, seeking abatement and then suing to recover. Chief justice Williamson rules as follows on several points:

1. The donor's motive to give the property to allegedly benevolent and charitable or scientific institutions was not material in determining whether the property was tax exempt.
2. A wildlife sanctuary, while benefiting wild animals, was not "charitable" within the tax exemption statute. There was no benefit to the community or public since purposes were not limited to prevention of cruelty to animals or research or disease control, and particularly since the prohibition on deer hunting was contrary to state game management policy.
3. A corporation using property as a wildlife sanctuary is not a "scientific institution" within the tax statutes where its purpose was to establish a game preserve, even though the area was available for nature study, observation and photography, and there was a library on nature and conservation.
4. The concept of charitable trust could not be validly extended to a purpose which is contrary to public policy, although not forbidden by law, and control of wildlife rests with the State.

**Howard v. Augusta** (1882) 74 Me. 79. Taxpayer sold personal property to the plaintiff. The property had an unpaid balance. The plaintiff paid the tax due, under protest, to be able to sell the property to a third party. The plaintiff's position is that the tax was assessed to the taxpayer, not the plaintiff and the amount paid should be refunded. The court ruled that the unpaid tax assessed to the taxpayer was on property in excess of that sold to the plaintiff and was, therefore, invalid to assign the balance due to the plaintiff. The court awarded the plaintiff the amount of the taxes he paid.

**Howard D. Johnson Company v. King** (1976) 351 A.2d 524. The Maine Turnpike Authority (MTA) had fee simple ownership of land and buildings leased to Howard Johnson Co. (Ho-Jo) adjoining the turnpike in Kennebunk for the purpose of carrying on a restaurant business at both service areas at mile 24. Ho-Jo furnished a list of its property to the assessor, but did not include the leased real estate. A tax was assessed against Ho-Jo for the "real estate" at the lease site. The town's claim that failure to file a perfect list barred the taxpayer from appeal. Justice Wernick disagreed stating that such a consideration leads inevitable to the merits of the case of hand. The court agreed that, based on the record, the tax had been assessed against the fee simple interest in the real estate owned by the MTA (plaintiff had described the subject of the tax as "Real Estate, Map 37, Lot 5." That the tax was assessed on the leasehold interest of Ho-Jo was characterized as an expedient afterthought. The court ruled that the legislative intent in creating the MTA, was that the umbrella against tax liability should also protect the MTA's private lessee as the user of the property for purposes of enabling legislation. The lessee's restaurant operation was for the benefit of the users of the limited access turnpike and therefore a public use as contemplated by the "equal taxation" constitutional provision that permits exemptions when the subject property is devoted to a public use. It was held that the tax exemption established for the MTA should extend to a private lessee of the MTA's real estate who makes public use of the property by virtue of P&SL 1941, chapter 69, section 9.

**Hurricane Island Outward Bound v. Vinalhaven** (1977) 372 A.2d 1043. The plaintiff taxpayer operated a self-development operation for teenagers specializing in outdoor programs. The taxpayer had applied for an exemption under 36 M.R.S. § 652(1)(B) for literary and scientific institutions. The defendant town had denied the exemption, but a lower court overturned that decision and allowed an exemption. The defendant town appealed that decision. The plaintiff argues that it is an educational institution that teaches scientific courses and, therefore, eligible for an exemption as a scientific institution. The court found that an educational institution and a scientific institution are two separate types of entities and the fact that an educational institution teaches scientific courses, by itself, is insufficient to qualify the entity as a scientific institution. The court ruled in favor of the defendant town, disallowing an exemption for the plaintiff. Apart from the decision, the court hinted that an entity may have to engage in scientific research to qualify for an exemption under 36 M.R.S. § 652(1)(B).

**Johnson v. Dedham** (1985) 490 A.2d 1187. The defendant, Town of Dedham, claimed title to property owned by the plaintiff as a result of the plaintiff's inaction regarding a lien the town placed on the property. The defendant claimed that the town's claim was invalid because the lien was invalid. The court ruled that the lien placed on the plaintiff's property contained an inaccurate and insufficient description of the property. The court also found that the lien incorporated two separate, non-contiguous parcels. Because a lien must accurately describe a single parcel, the court ruled in favor of the plaintiff and the town's lien was invalid as was its claim to the plaintiff's property.

**Johnson v. Goodridge** (1838) 15 Me. 29. The plaintiff, town treasurer, argued that the defendant, tax collector, was required to pay over taxes collected by the defendant. The defendant argued that, since the assessor had not signed the tax bills, taxes were never committed and the collector had no legal right to collect and pay over the taxes to the plaintiff. The court ruled that the errors in commitment did not affect the requirement for the collector to submit to the treasurer the money that was voluntarily paid by the taxpayers.

**Kelley v. Jones** (1913) 86 A. 252. Plaintiff claimed ownership of a parcel that the defendant claimed was sold to his mother through a tax acquired sale. The plaintiff argued that the property was not sufficiently described in the lien. The court agreed that the property was insufficiently described according to the strict guidelines the law requires and ruled in favor of the plaintiff.

**Kittery Electric Light Co. v. Kittery** (1966) 219 A.2d 728. The plaintiff, a regulated utility company, filed a list of its property with the assessors showing a net book cost thereof of \$645,978. The assessors adopted the gross book value of \$807,473, subtracted \$7,343 as value of land and applied a ratio of 46% to the balance with the understanding that this was the percentage of true market value used on nonresidential properties, arriving at a valuation of \$368,000. The utility appealed to Superior Court which applied a ratio of 90% to bring the company's property including land to the level at which he found residential properties assessed in relation to true value. Superior Court, therefore, granted an abatement of \$6415.08. Both parties appealed to the Supreme Court.

The utility argued the court erred by not using its net book cost and 30% ratio it determined to be the average assessment ratio. The defendants argued no abatement was proper.

Justice Dufresne decided on a number of issues as follows. Although net book value for rate-making purposes should closely approximate valuation for tax purposes in the long run, a blind adherence or automatic adoption of the P.U.C. valuation would constitute a flagrant disregard of the constitutional requirement. These values need not be the same. Where it is impossible to achieve both standards of true value and uniformity and equality, the latter requirement is to be preferred as just and ultimate purpose of the law. The market value of single purpose property must be determined by consideration of all factors calculated to influence assumed buyer and seller in reaching fair price in a free market. Consideration may be given to: 1) original cost of construction, less depreciation, 2)

reproduction cost with allowance for depreciation, 3) purchase price, if not sold under unusual conditions and 4) capacity of the property to earn money for its owner; and while none of these elements are controlling, each has its place in estimating value for tax purposes.

The assessor's rejection of the company's accrued depreciation without any other evidentiary support of their action than their unexplained mental conclusion that gross book cost was closer to just value smacks of arbitrary guesswork which the lower court was not bound to perpetuate. The court dismissed both appeals and held the decision of the Superior Court.

**Knight v. Thomas** (1900) 45 A. 499. The plaintiff taxpayers petitioned the court to instruct the defendant assessors of Topsham, through a writ of mandamus, to revalue certain property. The plaintiffs claimed that the assessors undervalued one business property and wrongfully exempted another property. The defendants argued that the plaintiffs, as individuals with no interest in the valuation and who were not accusing the defendants of neglect of duty, could not issue a writ of mandamus. The court ruled that: 1) the plaintiffs, as individuals who were directly affected by the valuation of property in their town, were eligible to petition under a writ of mandamus; but that 2) the writ was the wrong vehicle for reconsideration of value; and 3) would be ineffective if issued. The plaintiff's petition was denied. A writ of mandamus is an order to a lower court or to a government official to correct an action or inaction.

**Lambard v. Kennebec County Commissioners** (1866) 53 Me. 505. The plaintiff had presented the assessors of Augusta with a true and perfect list of his taxable estate, as required, but the assessors assessed him for additional property. The plaintiff complained that he was entitled to an abatement from the assessors because of their illegal and overvaluation of his estate. The plaintiff refused to submit to an examination under oath requested by the assessors to verify his list filing and his abatement was denied. The defendant argued that this failure deprived the taxpayer of his right to appeal before the County Commissioner. Justice Walton ruled that a taxpayer's purported list is not to be taken as true unless he answers all proper inquiries in relation to the nature and situation of his property, and if required, subscribes and makes oath to the truth of his answers. The plaintiff had therefore deprived himself of the appeal to the County Commissioners by refusing to verify his list in the manner required by law.

**Lambert v. Wentworth** (1980) Me. 423 A.2d 527. Plaintiff challenged the constitutionality of a veteran's property tax exemption statute that made eligibility conditional upon:

- A. having been a resident of this State at the time of his entry into service; or having been a resident of this State for at least 10 years prior to making the claim for exemption, and
- B. that the person be a resident of this State.

The plaintiff, who only recently acquired residency status, and had not satisfied either of the conditions under (a), argued for exemption status. Retired Justice Dufresne ruled as follows on the several issues raised. First, he argued that the exemption preference based upon a 10 year residency requirement was flawed. This requirement places a direct and real impediment upon a veteran's right. It cannot be justified under the strict test of showing a compelling state interest to be achieved by this classification. Because the Equal Protection Clause does allow statutory distinctions, and so long as a classification does not turn on suspect criteria (such as durational residency requirements) it requires only a rational justification for the decision to classify. The requirement of residency at the time of entry into service was viewed a proper distinguishing factor upon which to base veterans' performances. The court further ruled that although both conditions were enacted together without a severability clause should one fail, that the overriding intent of the Legislature to relieve cities and towns from loss of the base suggested that the invalid portion of the statute is separable from and independent of the rest of the statute which is valid, because it

undoubtedly would have been enacted on its own had the Legislature been aware of the flaw in the 10 year durational requirement. Judgment was for the defendants.

**Levant v. Penobscot County Commissioners** (1877) 67 Me. 429. A taxpayer from Levant requested abatement of tax from the town. The town denied the request and the taxpayer appealed to the county commissioners for Penobscot County. The county commissioners approved the taxpayer's request and ordered the town to reimburse the taxpayer. The town appealed the decision to the Supreme Court. The town argued the abatement was erroneous because the taxpayer did not answer questions in writing and refused to answer some questions, and the taxpayer did not make a written appeal to the county. The court found that the taxpayer's appeal to the county commissioners should have been in writing, and that the taxpayer's refusal to answer some questions was improper. However, the county commissioners had generally not followed proper procedure. The court returned the case to the county commissioners, requiring them to, under oath, draft a written account of the questions asked of the taxpayer by the town and the taxpayer's answers to those questions. After that, the commissioners were to prepare their written decision, based on the questions and answers.

**Lewis v. Robbins** (1954) 104 A.2d 838. While on parole for one crime, the plaintiff committed a second crime, which violated the terms of his parole and triggered the remainder of his prison sentence. Plaintiff argued that the remainder of the sentence for the first crime and the sentence for the second crime should run concurrently. This is the standard treatment for multiple sentences and is in law. This, argued the plaintiff, is the intent of the Legislature and the court cannot rule otherwise. The court found that it is true that the justices cannot interpret laws in a manner that is contrary to legislative intent. In this case, however, a specific statutory provision deals with crimes committed while on parole. This provision states that the second sentence begins after the first sentence has finished. Because this is a specific statute, application of consecutive sentencing in this case does not violate legislative intent.

**Lewiston v. All Maine Fair Assn.** (1941) 21 A.2d 625. The plaintiff (City of Lewiston) taxed the defendant, an agricultural fair association, on property the city alleged was taxable. The association argued that all of its property is exempt because it is a scientific institution. The city claims that the property was not occupied by the association for its own purposes. The court ruled that some property was exempt and some property was taxable. The property that was used primarily for association purposes was exempt, even though that property was occasionally rented to others. The occasional rentals did not interfere with the primary use of that property. The property that was rented to unrelated entities for their sole use was taxable, the court ruled. Also taxable was property that was unoccupied and not used for association purposes.

**Lewiston v. Marcotte Congregate Housing, Inc.** (1996) Me. 673 A.2d 209. City of Lewiston appealed to the Superior Court a decision of the Lewiston Board of Assessment Review which found that Marcotte's building was 82% exempt and 18%, used for doctors' offices and units rented at market rents, was taxable. Marcotte is a non-profit corporation and found to be benevolent and charitable. It's building in Lewiston was of five stories providing a congregate care housing facility, a kitchen and cafeteria facility serving, the Marcotte residents, the adjoining hospital and the general public, various offices for doctors and storage spaces. In addition there was a tunnel connecting Marcotte with the hospital. The Superior Court found that, because of the parts of the building which were leased to doctors and the cafeteria, and leased storage spaces, that the property was not "solely" used for its own purposes and therefore the entire building was not exempt under 36 MRSA 652(1)(A). The court found no justification in the law for the Board's pro-ration of the exemption. Marcotte then appealed to the Supreme Court which, reviewing, de novo, the decision of the board, affirmed the finding of the Superior Court.

**Lewiston v. Tri-State Rubbish, Inc.** (1996) Me. 671 A.2d 955. The City of Lewiston assessed tax on dumpsters owned by the defendant and rented to customers in the city. The defendant had no permanent place of business in Lewiston and the business was located in another municipality. The defendant claimed that the dumpsters, as personal property, were taxable to the defendant's principal place of business under 36 M.R.S. § 602, which says that personal property is taxed where the owner resides. The city argued that the dumpsters fell under the exception to § 602 in § 603(2)(C). This exception applies to "store fixtures, office furniture, furnishings, fixtures and equipment. The court ruled that the term "office" in § 603(2)(C) modified not only furniture, but also the subsequent terms "furnishings, fixtures and equipment." While the defendant's dumpsters were certainly equipment, they were not office equipment and that is what the exception in question applied to. The court ruled in favor of the defendant that the dumpsters were not taxable to Lewiston.

**Libby v. Portland** (1909) 74 A. 805. The plaintiff, an individual, sustained an injury in a building owned by the defendant City of Portland. The plaintiff sued the city for damages. The city argued that it is not liable for injuries suffered by the plaintiff because municipalities are not liable for injuries occurring in a public building. The court explained that a municipality has two distinct operations, one corporate and the other governmental. Governmental operations are those that include the discharge of duties required by the Legislature for public purpose, such as the operation of a school. Corporate operations include the maintenance of real estate unrelated to public benefit, such as property acquired through lien for unpaid taxes. While governmental operations are protected from liability due to injury, municipal corporate operations are treated the same as private corporate operations. A municipality is liable for damages due to injury suffered in a building under the corporate operations. In this case, the court ruled that the property in question fell under the corporate function and the municipality is liable for damages.

**Macaro v. Windham** (1983) Me. 468 A.2d 604. The defendant, Town of Windham, appealed from an order of the Superior Court that reversed a decision of the State Board of Assessment Review to deny an abatement of the plaintiff's 1978 real estate taxes, finding that she was able to contribute to the public charge. At issue was whether the record, as a whole, contained such relevant evidence as a reasonable person might accept as adequate to support the conclusions that plaintiff failed to establish that she was unable to contribute to the public charges. The record showed that the plaintiff's monthly expenses, exclusive of real estate taxes and questionable \$100/month payments to her mother for mortgage repayment, exceeded her monthly income during 1978 and 1979. Therefore, Justice Wathen wrote that the Board was compelled to conclude that the record demonstrated plaintiff's inability to contribute to the public charges. The board relied on her ownership of an unencumbered asset, her mobile home, as additional support for its conclusion. Although the plaintiff possessed a valuable asset, in the absence of any ability on her part to repay a loan, reliance on the existence of that asset to deny a poverty abatement would defeat the purpose of the abatement provision which is to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay.

**Machiasport v. Small** (1885) 77 Me. 109. Plaintiff Town accused the defendant tax collector for the town of collecting taxes that were not accounted for. The defendant argued that the town's delivery of the commitment book was flawed. The collector claimed that the warrant was signed by only two assessors instead of three, the tax year was not specified, the date of the town meeting was not included and the arrest authorization for nonpayment of tax ignored the 12-year statutory waiting period. The court ruled that both sides had unresolved problems and sent the case back to a lower court for trial and a decision.

**Maine AFL-CIO Housing Development Corp. v. Madawaska** (1987) Me. 523 A.2d 581. In 1979 the plaintiff became incorporated as a nonprofit, charitable corporation for the purpose of developing, constructing and managing federally subsidized housing for low income elderly or handicapped

persons. HUD agreed to provide rent subsidies to all tenants for 20 years. Members of the AFL-CIO were part of the construction work force. Despite a town resolution to exempt the project from property tax in lieu of an annual service fee, the assessors assessed a tax and the corporation paid, but then sought abatement on the basis of exemption status. At issue was whether the corporation qualifies as a benevolent and charitable institution.

Justice Skolnick reasoned that even though the corporation acted only as a conduit to channel federal funds (none of its own funds were used) and even though the corporation derived benefit from the project due to the work of its union members, and even though the tenants could be evicted for nonpayment of their portion of the rent; the charitable purpose of the corporation was achieved and that any benefits derived by the corporation because of AFL-CIO union member employment was merely incidental to its primary charitable purpose. The corporation operated within the constraints of binding contracts and federal regulations that prohibited it from deriving profits from the project. The court construed the term benevolent to be synonymous with the word charitable.

**Maine Consolidated Power Co. v. Farmington** (1966) Me. 219 A.2d 748. The plaintiff appealed a decision of the assessors to deny an abatement of 1964 taxes. The utility argued that the cost of their property when first devoted to public use, less depreciation should control the tax valuation process.

Justice Tapley decided that the just value of a utility for tax purposes must be ascertained from consideration of all factors. It is the opinion of tax assessors and their judgment that controls, unless they are so unreasonable in light of circumstances that the property is substantially overvalued an injustice results or there is an unjust discrimination or the assessment is in some way fraudulent, dishonest or illegal. The appeal was dismissed.

**Maine Lumber Co. v. Mechanic Falls** (1961) 157 ME. 347. The issue was whether or not the county commissioners had jurisdiction to consider an appeal from the refusal of the assessors to make an abatement. The taxpayer had failed to file his list of property before the time set by the assessors. Neither the assessors nor the county commissioners had jurisdiction to hear an abatement appeal unless the taxpayer satisfied them that he was unable to furnish it at the appointed time. The reason given for not filing the list was that the plaintiff had provided an independent appraiser hired by the town with all the pertinent information with regard to his assets as the appraiser felt necessary. Thus the plaintiff believed the written list would be unnecessary. Chief Justice Williamson, relying on precedents established by previous courts, ruled that the taxpayers "reasonable excuse" or "good cause" for failure to file the list did not meet the statutory standard of inability to furnish it as the time appointed. The county commissioners had no jurisdiction to hear the appeal.

**Maine Medical Center v. Lucci** (1974) 317 A.2d 1. The plaintiff, a hospital, was a benevolent and charitable institution. The plaintiff, to comply with municipal parking requirements acquired a parking lot and constructed a parking garage for use by patients and employees. The hospital charged parking fees, but operated the facilities at a loss. The parking areas were not open to the public. The defendant, tax assessor for the City of Portland, claimed that the parking areas were not exempt under the benevolent and charitable institution exemption and assessed tax on that property. The plaintiff requested abatement, which the superior court awarded. The defendant appealed the superior court decision. The court noted it had previously ruled (*Curtis v. Androscoggin Lodge* (1904), 59 A. 518) that property generating occasional rent does not exclude that property from the benevolent and charitable exemption. The court ruled for the plaintiff that the property in question was exempt from tax.

**Maine State Housing Authority v. Depositors Trust Co.** (1971) 278 A.2d 699. The plaintiff, Maine State Housing Authority ("MSHA"), issued a bond anticipation note, which was to be purchased by

the defendant bank. Fearing a constitutional conflict, the bank subsequently declined to purchase the note and four questions were put to the court.

1. Does the note issuance by MSHA constitute a valid and constitutional public purpose? The purpose of the note was to purchase mortgages for property to be used for low-income housing. The court ruled that providing safe, sanitary housing to low income people provides a health and welfare benefit to the public. The note issuance for purchase of the mortgages was deemed a valid and constitutional public purpose.

2. Does the issuance of bonds and notes by MSHA violate the constitutional restriction on state debt? The Maine Constitution prohibits the loaning of the state's credit by the Legislature to another entity. The act creating MSHA specifically states that debt issued by MSHA is the responsibility of MSHA and not the state. The court ruled that issuance of bonds and notes by MSHA does not violate the constitution.

3. Does the act creating MSHA incur a debt of the state and, therefore, violate the constitution by providing for the "Housing Reserve Fund"? The fund language includes a provision for the Legislature to make annual appropriations to maintain a minimum balance. The court found that the appropriation language did not constitute a loan of state credit or a debt of the state. The fund language did not violate the constitution; appropriation of money to the fund is the option of the Legislature and not a requirement.

4. Does the fund language regarding appropriation violate the constitution by binding future legislatures? The court ruled that the language was permissive and hopeful, not binding and, therefore, the language was constitutional.

**McCarty v. Greenlawn Cemetery Assn.** (1962) 185 A.2d 127. The plaintiff owned property in the Town of Swanville. The property taxes for 1957 were not paid, so the town placed two liens on the property, foreclosed and acquired the property. The town then sold the property to the defendant. The plaintiff filed a "complaint to remove a cloud upon title to real estate." The court ruled that the tax liens filed on the property were flawed. The description of the property was insufficient in that the amount of land was questionable and did not list land and buildings separately. Further, the property was described as a single parcel, but the valuation was for two separate parcels. Because of these flaws, the court ruled that the liens were invalid and the property belonged to the plaintiff.

**Morris v. Goss** (1951) 147 Me. 89. The plaintiffs questioned the constitutionality of the Legislature enacting a statewide sales tax as emergency legislation. The plaintiffs argue that the preamble statement in the legislation that the revenue from a sales tax is required for the essential needs of state government is not a statement of fact but a statement of conclusion. The court ruled that the statement was adequate because taxes do fund the essential needs of government and the preamble statement is not the place to include the entire state budget to prove the necessity of the sales tax. The plaintiffs also argued that enacting a new tax as emergency legislation is not authorized by the Constitution. The court said that not only is this method allowed, but since it has happened nearly every legislative session, it is standard practice. The court must assume the Legislature acts in a constitutional manner, barring evidence to the contrary.

A more sweeping interpretation by the court is also in this opinion. The court determined the guidelines for future determinations regarding legislative action on emergency legislation, primarily the preamble statements. The court stated that they can rule on whether the Legislature has expressed a fact and whether that fact *can* constitute an emergency. They cannot review whether an expressed fact exists, nor whether a fact that *can* constitute an emergency *is* an emergency.

**Moser v. Phippsburg** (1989) Me. 553 A.2d 1249. In 1978 Phippsburg conducted a town wide revaluation and the assessors increased the valuation of all properties by 30% in 1982. Then in 1985 certain large-lot subdivisions close to the Kennebec River were identified by the assessors as having increased market value and they were increased by 50%. Additionally certain unusual architecturally-designed structures designed to specific lots were increased. The plaintiff argued that singling out a specific area of town for a 50% increase was inherently discriminatory. The lower court found for the taxpayers since "a potential for creating unequal apportionment of the tax burden" existed. Justice Hornby wrote the unanimous decision upholding the assessors. He wrote that the court has consistently held that to overturn a real estate tax assessment, a taxpayer must show that the property was "substantially overvalued," or that there was "unjust discrimination" in the apportionment of the tax burden, or that the assessment was "fraudulent, dishonest or illegal." However, in clarifying its decision in *Farrelly v. Deer Isle*, the court ruled that the potential for unequal apportionment is not enough. "Only if taxpayers can show that the assessor's system necessarily will result in unequal apportionment do they not have to show that their property is substantially overvalued. Assessors are not precluded from making adjustments designed to maintain equal distribution of the tax burden in the time period between town-wide revaluations."

**Mosher v. Robie** (1834) 11 Me. 135. Certain of the plaintiff's property was taken and sold by the tax collector to satisfy a tax assessed against the plaintiff in 1832. The parish had voted "to assess on the polls of the estates, \$200 for Mr. Pomeroy's salary, \$20 for taking care of the vestry, and \$30 for the music," which, with an overlay of 5% amounted to \$262.50. But the assessment was for \$265.20 because the assessors had included \$10 in their commitment to pay the tax collector pursuant to another vote "to allow the collector \$10 for collecting the taxes."

Justice Parris delivered the opinion of the Court that the parish voters did not authorize the assessors to include the \$10 in the assessment. The statute providing that assessors of towns and parishes would not be made responsible for the assessment of any tax which they by law required to assess; but the liability, if any, would rest solely with the town and that assessors would be responsible only for their own personal faithfulness and integrity did not protect the assessors in this case. They did not make an assessment required by law because they included in their assessment a sum not raised by vote of the parish and therefore exceeded the authorized overlay of 5%. It was not a faithful discharge of the assessors' duty to require the over collection. The purpose of this statute is to leave the assessors answerable for their own misdoings, and relieve them from all liability from the misdoings of others. The assessment, in its entirety, was illegal and void.

**Murray v. Ryder** (1921) 115 A. 256. The defendant leased a portion of a parcel to the plaintiff. During the course of 20 years, the defendant paid the property tax assessed on the entire parcel. The defendant claimed the plaintiff owed 1/3 of the back taxes, while the plaintiff argued that he owed nothing, since the defendant made the tax payments voluntarily. The taxes were assessed to the plaintiff and the tax bills were sent to the defendant (plaintiff lived out-of-state). The court ruled in favor of the defendant and ordered the plaintiff to pay 1/3 of the tax. The court dismissed the plaintiff's claim of voluntary payment, saying that the defendant had no choice but to pay the tax or risk seizure of the property. Further, the lease agreement required that the defendant pay taxes only on the leased portion. The court treated this property the same as that owned by tenants-in-common, where each owner is responsible for their proportionate share of tax, even if one owner makes the entire payment.

**Nason v. Ricker** (1873) 63 Me. 381. Both parties claimed title to real estate in the Town of Lyman. The plaintiff through a deed from the former owner, Cyrus Conant, and the defendant through a deed from the Lyman town treasurer who sold the property for nonpayment of taxes assessed against Conant. Justice Dickerson, finding for the plaintiff, ruled that the tax deed could not be upheld for three reasons. First, the assessment was made upon two separate lots in gross that deprived the owner of the right to redeem either lot separately. Secondly, the notice of the

treasurer's sale did not contain an adequate description of the property to be sold; the law requires that the notice contain a description which identifies the land with reasonable certainty, whereas the notice contained only the owner's name, the number of acres, the valuation, and the tax amount. Thirdly, the evidence was insufficient to show that the sale was by public auction; the only reference to such sale was in the tax deed itself, and the party claiming title under such a deed bears the burden to prove by other evidence that the sale occurred at public auction.

**Nature Conservancy of the Pine Tree State v. Bristol** (1978) 385 A.2d 39. The plaintiff nonprofit land conservation society requested a tax exemption as a literary and scientific institution under 36 M.R.S. § 652. The defendant town denied the request and the plaintiff appealed. The court ruled that the land held by the plaintiff was not “used solely for their own purposes,” as required under § 652. The land consisted of five separate parcels. Each parcel was donated to the conservancy with certain rights retained by the donors. The retained rights consisted of rights of way to water, the right to maintain certain parts of the parcels, and custodianship. The court said:

“Land held in its natural state does not become tax exempt by transfer to a charitable institution where the grantor retains the rights to access, passage or custodianship, more particularly since these tend to be the only private rights of ownership exercised while land is privately being held in its natural state.”

**Norridgewock v. Walker** (1880) 71 Me. 181. The defendant taxpayer argued that he did not owe property tax to the plaintiff Town of Norridgewock because: 1) He was not a resident of the town on April 1; and 2) The assessment was illegal, since the assessment list was not signed and recorded with the town clerk's office before the commitment date. On the first issue, the court ruled that the defendant's temporary absence from the town on April 1 did not constitute his being a nonresident, even though he had paid a poll tax to another town. On the second issue that, while it was true that the assessment list had not been signed and recorded before commitment, that “should not be regarded as fatal.” The fact that two of the three assessors appeared in court sometime after commitment and signed the assessment list was significant in the court's decision in favor of the plaintiff town.

**Opinion of the Attorney General** (April 10, 1978) 1978 Me. AG Lexis 139. This opinion is on the subject of poultry farming operations as they relate to the Farm and Open Space Law. The attorney general stated that, while poultry farming is not included in the definition of farmland (limited to cropland, orchard land, and pastureland), proceeds from those operations do count toward the income threshold for qualification in the Farm and Open Space Law program.

**Opinion of the Attorney General** (March 4, 1980) 80-58. The Attorney General determined that the residents of a town could not, at a town meeting, vote to refuse collection of that town's share of the school administrative district (“SAD”) budget. The SAD budget is voted on at a district meeting and a town meeting vote cannot override the district budget.

**Opinion of the Attorney General** (February 16, 1982) 82-11. The Attorney General determined that property owned by the American National Red Cross (Red Cross) is exempt from tax. Federal law exempts instrumentalities of the federal government from state taxation. The U.S. Supreme Court has ruled that the Red Cross is a tax-immune federal instrumentality. Therefore, the Red Cross is exempt from property tax.

**Opinion of the Justices** (April 10, 1945) 141 Me. 442. The court ruled that a bill submitted to the Legislature that proposed to eliminate the property tax on intangible property is constitutional. The Constitution allows the Legislature to tax different classes of property. The primary limitation to the power of taxation is that any tax imposed must be apportioned and assessed equally. The

Constitution does not require the Legislature impose tax on all classes of property. Therefore, eliminating intangible property from taxation is constitutional.

**Opinion of the Justices** (1970) 261 A.2d 53. Both bodies of the Legislature passed by 2/3 vote a resolve proposing a constitutional amendment to allow convening of the Legislature at such times as the Legislature deemed necessary. The measure was forwarded to the Governor who vetoed it. The House decided that this was an important question of law and a solemn occasion and essentially asked the court for an opinion as to the effect of the Governor's veto. Art. IV, Part Third, Section 2 of the Constitution provides, in part,

Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary . . . which shall have passed both Houses, shall be presented to the Governor, and if he approves it, he shall sign it; if not, he shall return it with his objections to the House . . . The Justices reasoned that a resolve proposing constitutional change is not a bill or resolve having the effect of law. In proposing a constitutional amendment the Legislature is not exercising its power to make law, but simply acting as a special organ of government for the purpose of initiating a constitutional amendment. The Governor is not a proper party to this function and in this case his veto was void. The Legislature erred in forwarding the bill to the Governor. A long continued practice of the Legislature cannot have the effect of imposing duties upon the Governor beyond those provided in the Constitution.

**Opinion of the Justices** (1979) 402 A.2d 601. Legislative document L.D. 1432 would have authorized the Town of Kennebunk to abate certain property taxes for the years 1973 to 1977 assessed and collected by the town on the property of Folsom. This resolve would authorize an abatement that would not be authorized for any other taxpayers similarly situated. The opinion of Chief Justice Mullen, who had previously written on this issue, was stated as authority for the instant opinion. He wrote: "On principle then it can never be within the bounds of legitimate legislation, to enact a special law, or pass a resolve dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just nor reasonable in its consequences."

The assessors' property card indicated road frontage of 354 feet, but in 1979 the taxpayer discovered the error and it was corrected to 150 feet. The error resulted in excess valuation of \$4030 for tax years 1973 to 1978. The tax bills did not describe the property dimensions. The assessor granted abatement for 1978, but denied further abatement and agreed that the error in the town's records had resulted in overvaluation. The opinion, relying on Chief Justice Mullen's analysis, concluded that such a resolve violated the special legislation and equal protection clauses of the Maine Constitution.

**Orland v. County Commissioners** (1884) 76 Me. 460. The plaintiff town argued that an abatement awarded to a taxpayer by the defendant county commissioners was erroneous because the taxpayer, on request, provide a true and perfect list of her property, but did not include values for that property. The court ruled that the abatement was allowable and no error occurred with the taxpayer's true and perfect list. The law requires that a taxpayer provide only a list of property when asked for a true and perfect list. The town may then submit further questions, including a request for the value of taxable property, but values are not required with the original list.

**Orneville v. Palmer** (1887) 10 A. 451. The town assessors were sworn in to office by a person who was not authorized to administer oaths. The court determined that, since the oaths were administered by someone who was not authorized to do so, the tax assessed against the defendant was illegal.

**Osteopathic Hospital of Maine v. Portland** (1942) 26 A.2d 641. The plaintiff hospital was tax exempt as a benevolent and charitable institution. The plaintiff purchased additional land for a planned expansion. The defendant City of Portland assessed taxes on the additional land. The plaintiff requested abatement, claiming the purchased land was also exempt as part of the benevolent and charitable institution. The defendant argued that the additional land was not in actual use for the purposes of the hospital on April 1 and that future plans do not affect the current tax status. The defendant, as proof, pointed to the exemption for religious houses of worship, where only enough land for ingress and egress is exempt. The court dismissed the house of worship comparison, since it falls under a different section of law. The benevolent and charitable exemption language is more inclusive than that for houses of worship. The plaintiff's additional land, although not in actual use by the hospital on April 1, was not used for any purpose that would prevent an exemption. Actual use on April 1 is not an appropriate measure for determining exemption under this statute. Prior court decisions stated that property of summer camps falling under the benevolent and charitable definition were not unqualified for exemption because the camps were closed for the season and not in operation on April 1. Further, the land was intended to be used for the plaintiff's expansion and was not held as investment property. The court found in favor of the plaintiff.

**Otisfield v. Scribner** (1930) 129 Me. 311. Both parties agreed to report this case to the Court to adjudicate a dispute over the validity of property taxes for the years 1924, 1925, 1926 and 1927. Scribner et al were sued for unpaid taxes on real estate in Otisfield. When Otisfield held its Annual Town Meeting in 1924 and 1925, Mr. Stone was elected to serve as a member of the Otisfield Board of Assessors, despite the fact that he had neither completed his duties as Otisfield's tax collector nor made a final settlement with the Town, thereby violating the statutory prohibition against holding the office of assessor and tax collector simultaneously. Since a Board of Assessors acting de facto cannot levy a legal assessment, the plaintiff attempted to cure this defect by securing passage of an act which retroactively validated the 1924 and 1925 assessments (P&SL 1927, c. 49). Citing precedents in this and other states, Justice Barnes affirmed that "[a] void tax cannot be made valid by the legislature" and therefore, held that the plaintiff could not enforce collection of 1924 and 1925 property taxes. For 1926 and 1927 taxes, the tax sale method utilized by the collector was defective in its process. The court held in this instance that an imperfect procedure does not impair the validity of a legal assessment, finding, therefore, in favor of the plaintiff for the latter two years.

**Owls Head v. Dodge** (1956) 121 A.2d 347. The plaintiff town made a supplemental assessment on the property of the defendant taxpayer. The defendant owned a municipal airport that was tax exempt for serving a public purpose and being open to the public. The property subject to the supplemental assessment consisted of buildings leased to private businesses. The defendant made three arguments.

- 1) The defendant argued that the supplemental assessment was invalid because it was the work of "an assessor, his wife and an attorney." The court ruled that, since all three assessors signed the supplemental assessment, it was valid regardless of who had done the actual work.
- 2) The defendant argued that the property subject to the supplemental assessment was exempt from tax as property included in the municipal airport. The court stated that not all property owned by an exempt entity is necessarily exempt. The buildings in question were leased to private companies and not open to the public. Further, the buildings were not operated for the public benefit. The court ruled that the property in question was taxable.
- 3) The defendant argued that the prior court's ruling was invalid because the judgment was not rendered between court terms, as agreed to by the parties. The defendant claimed that, since the decision was filed after business hours on November 1, the decision was actually

rendered on November 2, the start of the court's next term. The court ruled that the prior court's decision was rendered properly.

**P.H. Chadbourne v. Bethel** (1982) 452 A.2d 400. The plaintiff taxpayer applied for an abatement of taxes under the Chase law, which allows a lower assessment of 25 or more acres of forest land if the tax burden creates an incentive to stop harvesting that forest land. The court ruled that the taxpayer did not provide enough evidence to meet their burden of proof in this case and upheld the lower court's denial of the requested abatement.

**Patterson v. Creighton** (1856) 42 Me. 367. The defendant assessors included a prior year highway tax in the plaintiff taxpayer's assessment. The plaintiff did not pay the tax and the assessors seized some property of the plaintiff's. The plaintiff argued that the inclusion of the highway tax was invalid because the list of delinquent highway tax accounts given to the assessors was not signed by the surveyor, as required by law. The court ruled that the assessors erred in accepting the unsigned list, but the error did not rise to the level of holding the assessors personally liable. The court stated that assessors are "protected from liabilities for certain mistakes and errors of judgment, in the honest discharge of their official duties, when in the exercise of their jurisdictional powers." The court ruled in favor of the defendant assessors.

**Pearson v. Canney** (1874) 64 Me. 188. The plaintiff, tax collector for Orneville, failed to collect and pay taxes to the defendant, treasurer for Orneville. The defendant issued an order to seize property of the plaintiff in payment for uncollected taxes, then sold that property. The plaintiff sued for wrongful taking of property. The court found that the collector was not given a warrant to collect taxes and did not receive an authorized list of taxes due. The list given to him was not signed by the assessors and, therefore, taxes were not legally committed. Because the taxes weren't legally committed, the collector was not responsible for the taxes, whether collected or not. The court ruled in favor of the plaintiff and ordered the defendant to pay him the amount of money received from the sale of the property seized.

**Penobscot Chemical Fibre Co. v. Bradley** (1904) 59 A. 83. The plaintiff taxpayer argued that the defendant, Town of Bradley, overvalued the taxpayer's property compared to similar classes. The court stated that the intent of the Legislature, regarding the law allowing the court to provide relief in cases of overvaluation, was to allow relief only in cases where property is valued higher than just value. If the taxpayer's property is assessed at market value and other, similar properties are undervalued, the court will not award an abatement to the taxpayer. As such, the court rejected evidence showing a potential disproportionate valuation. The court said that the plaintiff (on which the burden of proof rested) did not present convincing evidence that its property was overvalued and ruled in favor of the defendant.

The court also made two other influencing statements in this case. First, it said that valuations in years other than the year being considered have no bearing on the value of property in the considered year. Second, the court clarified that a successful appeal of a denied abatement does not void the entire assessment.

**Pentecostal Assembly of Bangor v. Maidlow** (1980) Me. 414 A.2d 891. The plaintiff constructed a single-family residence on a 1 acre lot formed out of the large lot on which the main church building stood. The church custodian and his family lived in the house, its only use. The Bangor assessor taxed the 1 acre lot and residence. Plaintiff argued for exemption as property owned and occupied solely by a benevolent and charitable institution. Justice Godfrey's analysis concluded that although some activities of the Assembly may be properly classified as benevolent and charitable, it did not meet the condition for exemption. The Assembly was organized as a church and is conducted primarily as a church. Religious purposes are not equivalent with benevolent and charitable purposes. Since The Assembly cannot be characterized as a benevolent and charitable

institution for purposes of 36 MRSA 652(1)(A), the court did not have to reach the question of whether the property used by the custodian was "occupied or used by" the Assembly solely for its own purpose.

**Perry v. Lincolnville** (1950) 75 A.2d 851. The defendant, Town of Lincolnville, requested a true and perfect list of taxable property from the plaintiff taxpayer. The plaintiff submitted the list to the town by registered mail, then subsequently requested an abatement. The town determined that the plaintiff was barred from abatement because they didn't personally deliver the true and perfect list, as required by law. The plaintiff appealed. The court ruled that, under modern conditions, the legal requirement to "bring in" a list is met if the list is filed with the assessor. Filing a list includes sending it by mail. The court quoted Lord Coke, a noted British justice, who said (translated) "When the reason of the law ceases, so does the law itself." When the law was written, personal delivery of a true and perfect list was the logical method. At the time, there was no postal service as there is now. Further, personal delivery by all taxpayers to the municipal offices on the same day would be a burdensome process. The court ruled in favor of the plaintiff.

**Portland Terminal Co. v. Hinds** (1944) 39 A.2d 5. The defendant, assessor for Portland, taxed both land and buildings to the plaintiff taxpayer. The plaintiff owned the land and leased it to other entities. The buildings on the leased land were owned by those other entities. The plaintiff filed for abatement of the portion of taxes assessed on the buildings. The defendant argued that buildings should be taxed to the owner of the land and presented several Massachusetts law court decisions in support of that position. The court ruled that Massachusetts law specifically taxes property in this way and that there is no corresponding Maine law. The court looked to other states, specifically New York, to determine that ownership of the buildings represents a property right separate from the ownership of the land and the building owners should be taxed separately for that right. The court found in favor of the plaintiff.

**Quoddy Realty Corp. v. Eastport** (1998) 704 A.2d 407. The plaintiff taxpayer purchased property in Eastport for \$40,000. The defendant town assessed the property at \$292,597. The plaintiff requested abatement and submitted a separate appraisal of the property of \$69,250. The town denied the abatement, claiming that their appraisal method was fair and equitable. The plaintiff appealed; the Superior Court agreed with the plaintiff that the property was overvalued and ordered the town to assess a value of \$69,250. The town appealed. The court ruled that the Superior Court erred in placing a specific value on the property; instead the lower court should have remanded the case back to the county commissioners for an independent appraisal. The law court did, however, agree with the lower court in that the town had overassessed the property. The town was under the mistaken impression that a single valuation method must be used for all property and that all other methods were not to be considered. The court stated that the goal of appraisal is to estimate market value and, while one method may be used predominantly, the other methods should be considered to achieve just value.

**Rockland v. Farnsworth** (1913) 111 Me. 315. This case was an action of debt brought by the City of Rockland against Lucy Farnsworth, executrix of the last will and testament of James Farnsworth, to recover taxes assessed against her for the years 1907, 1908 and 1909. Because such an action does not involve a forfeiture of property, it may be defeated only by such omissions or defects which relate to the authority of the assessors to assess the tax, or the deprivation of a substantial right of the defendant, or by some omission of an essential prerequisite to the bringing of the action. Justice Cornish delivered the Court's decision in response to the 7 points raised by the defendant.

1. Wrong characterization of the person assessed. In 1907, the assessment is against "Lucy C. Farnsworth executrix estate of James R. Farnsworth." In fact, she was administratrix of the estate with will annexed. For 1907 and 1909, the variance was immaterial; for 1908 the failure to name the estate was not fatal. Property ownership carries a responsibility to pay a

just proportion of taxes, and it is not possible to escape this obligation because of harmless errors and frivolous objections. The omission neither questioned the jurisdiction of the assessors nor deprived the defendant of any substantial right.

2. Insufficient designation of property assessed. The assessment for each year was simply for "personal estate \$10,000". Since the record showed the amount of personal estate liable to taxation was far in excess of the amount assessed, the meagerness of the description had no effect upon her legal rights or her legal burdens. Furthermore, the defendant had it in her power to make the description accurate and complete by filing the list required by law, which she did not do.
3. Interlineation in the assessment of 1907. When taxable items were copied from the inventory to the assessment record, and it was discovered that this particular tax was mistakenly omitted, the interlineation (writing between the lines) was made in accordance with the facts before the commitment to the collector. Such errors are correctable.
4. No personal property was shown to be in the hands of defendant. Farnsworth died in 1905. Following litigation, the defendant was appointed personal representative and from that time forward, in the eyes of the law she had all the goods and estate in her possession. Physical possession was not necessary. Defendant was legally taxable for that property in 1907, and since she never notified assessors of any distribution of the estate, the liability continued through 1908 and 1909.
5. Insufficient notice to taxpayers. The seasonal notice to taxpayers to file a list is no longer a condition precedent to a valid assessment, and an action to recover a tax can be maintained even if the assessors have not complied with this requirement (Boothbay v. Race).
6. Tax Collector not legally elected. Any irregularity in the election of the collector had no effect on the validity of the assessment or the obligation of the defendant to pay it.
7. Insufficiency of direction to bring suit. The direction to bring this suit was given by the mayor and treasurer to the city solicitor; defendant argued it should have been given to the collector as provided by statute. The Legislature never intended to prevent a municipality from bringing such a suit in its own name.

Rockland was awarded a judgment for the three years of unpaid taxes plus interest from the date of demand.

**Rockland v. Ulmer** (1892) 24 A. 949. The defendant taxpayer claimed that his assessment for 1888 was illegal for two reasons: 1) The plaintiff, City of Rockland, combined municipal, county, and state taxes into one bill. This, argued the defendant, was illegal because the county and state taxes were not due to the municipality; and 2) The plaintiff combined three noncontiguous lots owned by the defendant into a single assessment. The defendant claimed that this combination was not authorized and, therefore, illegal. The court stated that neither of these "irregularities" changed the defendant's assessment nor his tax due. The court ruled that the municipality, authorized by the Legislature and acting as the agent for the county and the state, was legally responsible for collecting the municipal, county, and state taxes and combining those taxes into one bill was not illegal. The court also found that, while it may limit the lien process, combining noncontiguous lots with the same owner did not violate the law. The assessment was not illegal and the defendant was liable for the full amount of the tax.

**Salvation Army v. Standish** (1998) 709 A.2d 727. The defendant, Town of Standish, assessed property tax against property owned by the plaintiff taxpayer. The plaintiff argued that the property is

exempt property of a benevolent and charitable institution. The property in question was used by the plaintiff as a summer camp for underprivileged children. Some of the cabins on the property were occasionally rented by officers of the plaintiff organization for vacations. The defendant claimed that 1) the plaintiff was a religious society and not entitled to a charitable exemption; 2) the property was not used solely for charitable purposes; and 3) use of the cabins by officers violated the compensation limitations of the law, which allow for only reasonable compensation for employees of a charitable organization. The court ruled 1) the religious aspect of the plaintiff organization did not preclude an exemption; 2) the property was, in fact, owned and occupied for the plaintiff's own charitable purposes; and 3) the incidental use of cabins by officers fell under the realm of reasonable compensation.

**Sawyer v. Gilmore** (1912) 83 A. 673. The plaintiff, a taxpayer in the unorganized territory, claimed that the state violated the Maine Constitution by imposing a portion of property tax for education on all property in the state, but distributing that tax only to organized municipalities. The court said that the Constitution requires equal application of tax on all property in the state. The Constitution does not require equal distribution of the taxes collected. The court stated that "[I]t is not necessary that the benefits arising [from taxes] should be enjoyed by all the people in equal degree nor that each one of the people should participate in each particular benefit." The court found no constitutional violation.

**Schwanda v. Bonney** (1980) 418 A.2d 163. The plaintiff, a resident of Freeport, applied for a concealed gun permit from the defendant town. The town, which had an ordinance imposing stricter licensing requirements than the state law, denied the plaintiff's request. The town argued that because the state law stated that a town may issue a license under certain conditions, the town was authorized to enact greater restrictions. The court ruled that the Legislature did not authorize municipalities to create restrictions more stringent than state law. In the opinion, Justice Dufresne wrote: "[I]t is an accepted principle of statutory construction that, when the word 'may' is used in imposing a public duty upon public officials in the doing of something for the sake of the public good, and the public or third persons have an interest in the exercise of the power, then the word 'may' will be read 'shall,' the exercise of the power being deemed imperative by legislative intendment." The court ruled in favor of the plaintiff.

**Seaborne v. Look** (1983) 464 A.2d 221. The plaintiff taxpayer appealed an abatement denial to Superior Court. The lower court determined that, since the plaintiff was not the owner of the property, she had no standing to appeal. The court ruled that she was not aggrieved by the tax assessment and dismissed her appeal. The plaintiff appealed to the law court. The law court ruled that the lower court did not identify whether the plaintiff was a nonowner in possession of the property, which would have given her standing to appeal the abatement denial. The court vacated the lower court's decision and sent the case back to the lower court to review the case.

**Sears, Roebuck & Co. v. Presque Isle** (1954) 107 A.2d 475. The plaintiff claimed that real estate in Presque Isle for 1953 was assessed at only 47% of its value, but that its personal property was assessed at 80% of value and this violated the equality required by Art. IX, Section 8 of the Constitution. Chief Justice Fellows wrote the decision which was premised by the observation that taxation must be practical and that the practical methods and results of honest, though inexperienced assessors, who live in the town or city, are much more valuable, and as likely to be correct, as are the theoretical contentions of expert political economists. The plaintiff was burdened with proving that his property was overrated or that an unjust discrimination exists. The Assessor testified that all property, real and personal, was assessed at 80% of its value in 1953. The assessors used 1940 valuations prepared by a professional appraisal company for the town in 1949 and in each instance had increased them by 25% to reflect 1953 values and then used 10% of this value as the basis for assessment unless there was some determining factor to alter their decision. Adjustments were made for new buildings, razed buildings, etc. The court ruled that true and exact

"market" or "just" values cannot be certain. It is the judgment of the assessors when considering valuation for tax purposes that controls, unless it is so unreasonable that an injustice results or there is unjust discrimination, or that the assessment was fraudulent, dishonest or illegal. The value of the plaintiff's personal property was arrived at by taking 80% of that reported by the taxpayer as its value. This was consistent with their belief that all other property was being assessed at 80% of its current worth. While perfection in the assessment may not have been attained, there was no proof of a scheme to discriminate. The assessor's assessment was not manifestly wrong nor was there an unjust discrimination denying the equal protection of the law. The plaintiff did not establish that he was aggrieved.

**Sebago v. Drummond** (1979) 402 A.2d 469. The defendant taxpayer appealed the denial of an abatement request and received a reduced valuation by the county commissioners. The plaintiffs, tax assessors for the Town of Sebago, appealed the reduced valuation. The court ruled that "tax assessors are improper parties in tax abatement proceedings." Judgment for the taxpayer.

**Shawmut Inn v. Kennebunkport** (1981) 428 A.2d 384. The plaintiff taxpayer appealed the valuation of its property by the defendant town. The town valued the property at \$1.7 million, while a stock sale of the company generated \$830,000. The plaintiff argued that the town's valuation method was unlawful, in that only the cost method was considered, and the reliance on a single method resulted in an overvaluation. The court ruled that the plaintiff did not meet its burden of proof that the method of valuation used "violated the principle of equality mandated by the Maine Constitution." The cost method, in itself, is not a flawed valuation method and the plaintiff did not show that the town willfully rejected considering other valuation methods. To the issue of overvaluation, the plaintiff claimed that the defendant did not make a value reduction for economic obsolescence. The court ruled that a reduction of this nature is not required merely because the assessors' cards contain a line for it. The local assessor is the best person to determine whether economic obsolescence applies to a particular property. The plaintiff further argues that the sale of the company through a stock sale is the best determiner of market value. The court, however, found that the sale may not have represented an arms-length transaction. The court ruled in favor of the defendant town, denying the plaintiff's abatement request.

**Shawmut Manufacturing Co. v. Benton** (1923) 122 A. 49. The plaintiff owned a dam across the Kennebec River and appealed a denial of abatement by the Benton assessors for taxes levied in 1920 by arguing that the property was overrated relative to other property in town and therefore represented an unjust discrimination by scheme of the assessors.

Justice Dunn reviewed the applicable law as follows after dismissing questions of town boundary and use of the terms "privilege water right" in the assessment. There are two ways in which a taxpayer may be wronged in the levying of taxes: he may be excessively valued, or he may be taxed on the basis of just value of his property while, by assessors' scheme, other like property is assessed at less than just value. Equality of taxation is violated in each case. The court held that the right of a taxpayer whose property alone is taxed at 100% of its true value should have his assessment reduced to the same percentage of value as other taxpayers, based on the principle that where it is impossible to secure both the standard of true value, and the uniformity and equality required by law, the latter requirement is to be preferred. A witness for the plaintiff testified that after reviewing 14 recently sold lots, his conclusion was that property was taxed at from 55 to 60% of its just value. But the witness never differentiated the valuation of the plaintiff's property. In the Court's eye, he left it with a valuation comparable with that of all other real estate, and bearing no more tax than its share. The court was not convinced, based on the evidence presented, that a manifestly wrong overvaluation occurred or that there was an unjust discrimination that denied equal protection of the law. The appeal was dismissed.

**Silverman v. Town of Alton** (1982) 451 A.2d 103. Certain real estate owned by trustees of the Hirundo Wildlife Trust was assessed by the Alton assessors. The trust was to be operated exclusively to preserve and maintain the Hirundo Wildlife Refuge for the sole benefit of the University of Maine. The trust was irrevocable and legal title rested with the trustees. The plaintiffs argue that where the legal title is vested in trustees for the sole benefit of the University, a scientific institution, that ownership of the equitable or beneficial title brings the property within the tax exemption statute. Justice Dufresne wrote that the trust, although tied in with a purpose to benefit the University, invests the trustees with such broad powers and active duties of management as to negate any possibility of viewing the University's "equitable title" as equivalent to the meaning of ownership and occupation or use of the property "solely for its own purposes" by the University as a scientific institution within the meaning of 36 MRSA § 652(1) (B). The primary purpose in setting up the trust was the creation and maintenance of a wildlife refuge or sanctuary, which in and of itself is not a scientific institution; and the incidental scientific objective to benefit the University by permitting use of the property in conjunction with scientific studies is insufficient to qualify for exemption.

**Snow v. Weeks** (1885) 1 A. 243. The defendant tax collector arrested the plaintiff taxpayer for nonpayment of taxes. The plaintiff claimed that the arrest was illegal because the town did not, by vote, establish a due date for taxes. The defendant argued that, since a date establishing when interest on unpaid taxes would begin was voted on, that date effectively establishes the tax due date. The court ruled that a begin date for interest was not the same as a due date for taxes. Therefore the plaintiff's arrest was illegal.

**Solon v. Holway** (1931) 157 A. 236. The defendant taxpayer claimed a veterans exemption as the widow of a Civil War veteran. The defendant was married to a veteran who died. The widow then remarried. After the second husband died, the defendant claimed a veterans exemption. The court ruled that when the widow remarried, she ceased to be a widow and that when the second husband died, her status did not revert to that of the widow of her first husband. The court denied the defendant's exemption claim.

**Spear v. Bath** (1925) 130 A. 507. The plaintiff taxpayer appealed the defendant city's denial of an abatement request. The plaintiff presented as evidence the sale price of the property that the plaintiff paid the previous year was significantly lower than the assessed value. The court ruled that, since the sale was at an auction, the price paid by the plaintiff is not a good indicator of the fair market value of the property. The plaintiff had purchased the property for resale, so he must have thought the price he paid was a bargain and, in fact, the property was advertised as being a bargain. The court stated that "A real estate bargain price is presumably somewhat less than the market value." The court denied the plaintiff's appeal.

**Springfield v. Butterfield** (1903) 56 A. 581. The defendant taxpayer challenged the legality of his tax assessment. One of the plaintiff town's assessors had previously been a tax collector. This person had not been legally discharged from duties as a collector when elected as assessor. Because the person was still obligated as collector, holding office as assessor was illegal. The other two assessors were legally elected. The court found that the one illegally elected assessor voided the town's assessment for that year and the town was not authorized to collect that tax. Judgment for the defendant.

**State v. Hamlin** (1894) 30 A. 76. The plaintiff, State of Maine, appealed a lower court decision allowing the application of a \$500 taxable threshold to each beneficiary of a decedent's estate for purposes of the state inheritance tax. The state argued that the threshold should be applied to the entire estate and the value of property in excess of that amount is taxable. The court ruled that the threshold applied to each beneficiary prior to the tax calculation.

The defendant, beneficiaries of the estate, argued that the inheritance tax itself violated state and federal constitutional provisions. The defendant claimed that the tax violated Article IX, Section 8 of the Maine Constitution, which requires the value of property in the state be equally apportioned and assessed. The court ruled that the constitutional provision applied to property tax and that the inheritance tax is an excise tax because the rate is not calculated based on the total amount of revenue required to be raised. The defendant also argued that the tax violated the U.S. Constitution, which provides for the defense of acquiring and possessing property. To that argument, the court stated "There is no provision of our constitution, or that of the United States, which secures the right to anyone to control or dispose of his property after his death, nor the right to any one, whether kindred or not, to take it by inheritance." The court ruled that any acquisition and possession rights held by the decedent expired when the decedent died.

**State v. Keith** (1960) 166 A.2d 485. The plaintiff, State of Maine, appealed a lower court decision in favor of the defendant taxpayer. The taxpayer had an outstanding tax due to the state. The state mistakenly sent a bill for a smaller amount than that due and the taxpayer paid that amount. In a letter with the payment, the taxpayer wrote that acceptance of the check constituted payment in full. On receipt of the submission, the processing section of the Bureau of Taxation deposited the check. The taxpayer claimed that this constituted payment in full and the lower court agreed. The Supreme Court ruled that the act of processing a check by a state employee does not certify payment in full of an outstanding tax balance due. Judgment for the plaintiff.

**State v. Rand** (1976) 366 A.2d 183. The plaintiff, State of Maine took, through eminent domain, property of the City of Portland to construct a highway. A relative of the defendant had donated the land to the city to be used as a park. The state made a payment of \$30,000 to the city for the land, which the city intended to use to relocate the park to a nearby location. The defendant claimed that the taking of the land represented a violation of the original donation and the heirs of the donee were entitled to the payment. The court ruled that the original gift was in the manner of a trust, rather than fee simple and the city, as trustee, was responsible for the administration of the trust. The court further ruled that the location of the park was a less important intent of the donee than was the existence of the park in perpetuity. Therefore, the court ruled that the payment should go to the city for relocation of the park.

**State v. Western Union** (1882) 73 Me. 518. The plaintiff, State of Maine, assessed a tax on the defendant business. The tax was based on the value of certain property owned and used by telegraph companies. The defendant claimed that the tax was unconstitutional in that it was a property tax imposed only on a specific business type. The defendant argued that the tax was not assessed equally on all business types. The court ruled that the tax, while calculated based on the value of property, the tax was a tax on business operations, rather than on property. The property value was simply a measure of the business activity. Because the tax was imposed on business activity instead of on property, the law taxing only a certain type of business did not violate the constitutional requirement to assess all property equally. The court ruled in favor of the state and allowed the tax.

**Sweet v. Auburn** (1935) 180 A. 803. The plaintiff appealed the denial of the Auburn assessors to grant an abatement of 1933 property taxes. The petitioner claimed that the valuation (\$191,000) was greatly in excess of just value and that the tax was unequal because the assessment was at a higher percent of true value than other property in the city. The property was a shoe factory built in 1908 and expanded in 1912 and 1914 so that, by 1916, the total net book value of the land and buildings stood at \$184,647. The property was transferred in 1932 (during the Great Depression) for \$100,000. Plaintiff argued that the original cost of construction did not relate to current replacement cost because the structure was overbuilt and that contemporary establishments of comparable utility were being built at considerably less cost. The defendant offered evidence of the reproduction cost less depreciation figured at approximately \$179,000; the assessment value of the building alone was

\$120,000 that was not inconsistent with the assessors' claim that property was assessed at approximately 75% of true value.

Justice Thaxter cited that value is the highest price that a normal purchaser would pay, and that assessors should recognize and that the true value of real estate is fairly constant and gauged by conditions that are measurably stable over time. Since violent fluctuations in municipal income are undesirable, assessors may, to a certain extent, disregard the temporary impact of acute economic conditions. The taxpayer had not carried his burden of proving that the valuation was excessive or at a greater percent of true value than other taxable property.

**Sweetsir v. Chandler** (1903) 56 A. 584. The Town of New Gloucester assessed the property of the defendant taxpayer. When additional stocks and bonds owned by the defendant were discovered, the town issued a supplemental assessment. The defendant refused to pay, arguing that the supplement was not part of the voter-approved tax to be raised by the town. The court ruled that the law requiring a municipality to vote on the tax to be collected did not apply to supplemental assessments. The court further ruled that only part of the supplemental assessment was valid. The original assessment included other bonds known to the town. The additional bonds later discovered were not eligible for supplemental assessment because they represented an error of the assessors as to quantity, rather than an omission, which the court has previously required as a basis for a supplemental assessment. The stocks, the court said, were eligible for supplemental assessment.

**Thorndike v. Camden** (1889) 19 A. 95. The plaintiff was the tax collector in Camden who had been given a proper warrant to collect taxes legally assessed by the assessors. He made no effort to collect a tax against "D. Knowlton & Co.," but instead took a note and personally accounted to the town treasurer for it as money. The taxpayer became insolvent and never paid the note. Twelve years later the town voted to refund the money paid by the plaintiff for the tax that was never collected and to raise the money through taxation. Justice Emery held that the town could not impose a tax for this purpose and that the claim was from a public officer to be paid for a loss suffered by his neglect of a public duty and that it was not incident to or connected with the exercise, by the town, or its legal powers. The tax collector and assessors are public officers. Their authority is from the statutes, and they cannot be controlled by the town in the execution of that authority. No vote of the town can relieve the assessors of any part of their statutory duty. For a town to compensate a collector would be in effect abating the taxes he omitted to collect. A town has no power to abate a tax. To concede that a town can directly or indirectly abate a tax by vote in town meeting is to concede the power of a town to determine who shall pay taxes, and who shall be exempt, and the consequent power to place the public burdens wholly on who the majority singles out. A town has no such power, and the Legislature cannot confer it. The town could not do indirectly what it had no power to do directly.

**Topsham v. Purinton** (1900) 47 A. 919. The plaintiff town imposed a supplemental assessment against the defendant taxpayer. The defendant argued that the supplemental assessment was illegal. The town added the supplemental assessment to the original assessment book without obtaining signatures of the assessors and a statement that the property was omitted from the original assessment. The court ruled that the plaintiff did not follow the statutory requirements for supplemental assessments and found in favor of the defendant.

**U.S.A. v. Arlington County** (1964) 326 F.2d 929. The defendant, a county in Virginia, assessed personal property tax on the property of a servicemember. The property was located in Virginia while the servicemember was stationed out of state. The defendant argued that the servicemember voluntarily left his property in Virginia and it was, therefore, taxable. The court ruled that, according to the Soldiers' and Sailors' Civil Relief Act (now the Servicemember's Civil Relief Act), only a servicemember's home state can tax the property of that servicemember, regardless of where the property is physically located. Property of a servicemember is deemed to be located in the

servicemember's home state. In this case, the servicemember was domiciled in New Jersey, so the court ruled that the property was not taxable to Virginia.

**U.S.A. v. Chester County Board of Assessment** (1968) 281 F. Supp. 1001. The defendant, a county in Pennsylvania, assessed real property tax on house trailers owned by servicemembers who were residents of other states. The defendant argued that the house trailers were real property and taxable in Pennsylvania. The plaintiff argued that the trailers, according to the Soldiers' and Sailors' Civil Relief Act (now the Servicemember's Civil Relief Act), the trailers were considered personal property and, therefore, not taxable by Pennsylvania. The court ruled that the Soldiers' and Sailors' Civil Relief Act determined congressional intent to free servicemembers from the burden of local property tax. The court further ruled that congressional intent took precedence over state law, therefore the trailers were not taxable to Pennsylvania.

**Vigue v. Chapman** (1941) 24 A.2d 241. Plaintiff sought to recover land claimed by the defendants under a conveyance from the inhabitants of the town as a result of a tax lien foreclosure. Vigue claimed that town officials did not comply with all requirements of law necessary to enforce forfeiture for nonpayment of taxes. The decision of Justice Murchie hinged on the fact that there was no proof on record that the assessors ever signed a tax assessment against any property, or that they ever signed a warrant committing any taxes for collection. It is only by proper assessment that a lien can be created; no lien enforcement is available against an improper assessment.

**Weekley v. Scarborough** (1996) Me. 676 A. 2d 932. The plaintiff taxpayer appealed an assessment by the defendant town, claiming the town assessed their property at higher than just value. The Board of Assessment Review denied the appeal, but the Superior Court overruled that denial and applied the original sales price as the properly assessed value. The law court ruled that the taxpayer had proven that the town's assessed value was too high, but overturned the Superior Court's valuation, stating that the court did not have authority to assign a value to the property. The law court remanded the case to the Board of Assessment Review for adjustment of the property value.

**Whiting v. Lubec** (1922) 115 A. 896. The plaintiff, Town of Whiting, assessed property owned by the defendant, Town of Lubec, and located in Whiting. The defendant argued that all property owned by a municipality is exempt from tax. The plaintiff argued that, when property is located in another municipality, the exempt nature of municipally-owned property is limited by law. The court agreed with the plaintiff and allowed taxation of some of the property in Whiting owned by Lubec. Exemption applied only to property specifically exempted by statute.

**Williamsburg v. Lord** (1863) 51 Me. 599. This action was brought to recover certain parcels of land in Williamsburg that were presumably forfeited by Mr. Lord for nonpayment of taxes assessed in 1854. Justice Cutting operated on the assumption that forfeiture of title in tax enforcement proceedings is contingent upon strict compliance with every legal requirement relating to the assessment and collection of the tax. Williamsburg's 1854 Annual Town Meeting apparently chose John Dunning, Adams Merrill and John Clifford to serve as selectmen/assessors; but the record did not indicate that Mr. Merrill was ever sworn as an assessor. The court held that a three member board of assessors is not authorized to assess a tax when only two are qualified and sworn. A defective tax assessed by a de facto board nullifies subsequent enforcement action to collect the tax.

**Young v. Johnson** (1965) 207 A.2d 392. The plaintiff sought to compel the State Tax Assessor to cause properties of the Jackson Memorial Laboratory in Bar Harbor to be placed on the tax rolls. Justice Siddal wrote that the Assessor could not be compelled to require local assessors to include property on the tax rolls that they believed to be tax exempt. The State Tax Assessor has discretion in issuing such an order and he has a right to exercise this discretion. The court ruled that no writ of

mandamus could, as a matter of law, be issued to "cause to be placed upon the assessment roll for taxation" real or personal property. The court cannot control the discretion of public officers when they are required to act in a judicial or deliberate capacity, but officials can be compelled to exercise their discretion.